

# **EXHIBIT**

# **J**



Ralph Silverman, M.D.

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MARGOLIS, GALLAGHER &amp; CROSS, by</p> <p>4 LAWRENCE MARGOLIS &amp; IAN CROSS</p> <p>5 214 South Main Street, Suite 200</p> <p>6 Ann Arbor, Michigan 48104</p> <p>7 (734) 994-9590</p> <p>8 larry@lawinannarbor.com</p> <p>9 Representing the Plaintiff;</p> <p>10</p> <p>11 CORBET, SHAW, ESSAD &amp; BONASSO, by</p> <p>12 DANIEL CORBET</p> <p>13 30500 Van Dyke Avenue, Suite 500</p> <p>14 Warren, Michigan 48093</p> <p>15 (312) 964-6300</p> <p>16 daniel.corbet@csseb-law.com</p> <p>17 Representing Prime Healthcare Services,</p> <p>18 Colleen Spencer, and David Krause;</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> 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<p>968</p> <p>969</p> <p>970</p> <p>971</p> <p>972</p> <p>973</p> <p>974</p> <p>975</p> <p>976</p> <p>977</p> <p>978</p> <p>979</p> <p>980</p> <p>981</p> <p>982</p> <p>983</p> <p>984</p> <p>985</p> <p>986</p> <p>987</p> <p>988</p> <p>989</p> <p>990</p> <p>991</p> <p>992</p> <p>993</p> <p>994</p> <p>995</p> <p>996</p> <p>997</p> <p>998</p> <p>999</p> <p>1000</p>	<p style="text-align: right;">Page 4</p> <p>1 THE REPORTER: The attorneys participating</p> <p>2 in this deposition acknowledge that I am not physically</p> <p>3 present in the deposition room and that I will be</p> <p>4 reporting this remotely. They further acknowledge that,</p> <p>5 in lieu of an oath administered in person, the witness</p> <p>6 will verbally declare his/her testimony in this matter</p> <p>7 is under penalty of perjury. The parties and their</p> <p>8 counsel consent to this arrangement and waive any</p> <p>9 objections to this manner of reporting.</p> <p>10 Please indicate your agreement by stating</p> <p>11 your name and your agreement on the record.</p> <p>12 MR. CORBET: Dan Corbet, I'm fine with that.</p> <p>13 MR. CROSS: Ian Cross, I consent.</p> <p>14 MR. SCARBER: Devlin Scarber, I agree.</p> <p>15 THE REPORTER: Can I have a stipulation to</p> <p>16 the doctor's identity, foregoing the ID?</p> <p>17 MR. CORBET: Dan Corbet, yes.</p> <p>18 MR. CROSS: Ian Cross, yes.</p> <p>19 MR. SCARBER: Devlin Scarber, yes.</p> <p>20 What I would ask is, that he provide some</p> <p>21 kind of ID after the deposition, maybe to Mr. Cross;</p> <p>22 Mr. Cross, if you can get it to us?</p> <p>23 MR. CROSS: Sure. I don't have a problem</p> <p>24 with that.</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS EXAMINATION</p> <p>3 RALPH SILVERMAN, M.D.</p> <p>4 By Mr. Scarber 05, 71, 91</p> <p>5 By Mr. Corbet 42, 80, 90</p> <p>6 By Mr. Cross 59, 89</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> <p>192</p> <p>193</p> <p>194</p> <p>195</p> <p>196</p> <p>197</p> <p>198</p> <p>199</p> <p>200</p> <p>201</p> <p>202</p> <p>203</p> <p>204</p> <p>205</p> <p>206</p> <p>207</p> <p>208</p> <p>209</p> <p>210</p> <p>211</p> <p>212</p> <p>213</p> <p>214</p> <p>215</p> <p>216</p> <p>217</p> <p>218</p> <p>219</p> <p>220</p> <p>221</p> <p>222</p> <p>223</p> <p>224</p> <p>225</p> <p>226</p> <p>227</p> <p>228</p> <p>229</p> <p>230</p> <p>231</p> <p>232</p> <p>233</p> <p>234</p> <p>235</p> <p>236</p> <p>237</p> <p>238</p> <p>239</p> <p>240</p> <p>241</p> <p>242</p> <p>243</p> <p>244</p> <p>245</p> <p>246</p> <p>247</p> <p>248</p> <p>249</p> <p>250</p> <p>251</p> <p>252</p> <p>253</p> <p>254</p> <p>255</p> <p>256</p> <p>257</p> <p>258</p> <p>259</p> <p>260</p> <p>261</p> <p>262</p> <p>263</p> <p>264</p> <p>265</p> <p>266</p> <p>267</p> <p>268</p> <p>269</p> <p>270</p> <p>271</p> <p>272</p> <p>273</p> <p>274</p> <p>275</p> <p>276</p> <p>277</p> <p>278</p> <p>279</p> <p>280</p> <p>281</p> <p>282</p> <p>283</p> <p>284</p> <p>285</p> <p>286</p> <p>287</p> <p>288</p> <p>289</p> <p>290</p> <p>291</p> <p>292</p> <p>293</p> <p>294</p>	

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<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. If you don't understand a question that I might</p> <p>3 ask you, just let me know; and I will repeat or rephrase</p> <p>4 the question, and try to make the question better, so</p> <p>5 that you can understand.</p> <p>6 A. Yes.</p> <p>7 Q. You've indicated that you've given a deposition</p> <p>8 before. About how many times have you given a</p> <p>9 deposition before?</p> <p>10 A. 85 to 100 times since 2004.</p> <p>11 Q. And when did you become a licensed medical</p> <p>12 doctor?</p> <p>13 A. 1998.</p> <p>14 Q. And where do you currently practice?</p> <p>15 A. Is the question, where is my current practice?</p> <p>16 Q. Yeah, where do you currently practice?</p> <p>17 A. Are you asking me where my address is?</p> <p>18 Q. Where do you currently practice medicine?</p> <p>19 A. St. Louis.</p> <p>20 Q. Out of any clinic or hospital?</p> <p>21 A. I have an office, and hospitals that I go to.</p> <p>22 Q. Where's your office located?</p> <p>23 A. In St. Louis.</p> <p>24 Q. What hospitals are you affiliated with, or have</p> <p>25 privileges at, that you might see patients?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. The request for expert report.</p> <p>2 Q. And then after that?</p> <p>3 A. Michigan Department of Correction records.</p> <p>4 Q. You -- I thought you said there was some kind of</p> <p>5 request for a surgery record or something like that.</p> <p>6 Maybe I misheard you.</p> <p>7 A. This was -- some Lake Huron records. I'm looking</p> <p>8 at the actual file that I have, that's labeled on there;</p> <p>9 and these are progress reports; notes, if you will, of</p> <p>10 Lake Huron Medical Center.</p> <p>11 Q. And when were you retained in this particular</p> <p>12 case, to serve as an expert witness?</p> <p>13 A. My recollection is November of 2020.</p> <p>14 Q. And were you provided all the records that you</p> <p>15 just mentioned, in November 2020?</p> <p>16 A. I don't recall, but I believe it came in</p> <p>17 different points, if you will.</p> <p>18 Q. Do you know what materials you actually had when</p> <p>19 you wrote your report, your expert report in this case?</p> <p>20 A. No.</p> <p>21 Q. And what is your area of practice?</p> <p>22 A. I practice both general surgery and colorectal</p> <p>23 surgery.</p> <p>24 Q. Do you agree, Doctor, that medical professionals</p> <p>25 are taught to exercise medical judgment based upon their</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Mercy Hospital, St. Clair Hospital, and Missouri</p> <p>2 Baptist Hospital. That's a parent hospital.</p> <p>3 Q. And can you tell us if you brought any materials</p> <p>4 with you today for your deposition?</p> <p>5 A. I did.</p> <p>6 Q. And what did you bring?</p> <p>7 A. I brought my record with me, including -- in no</p> <p>8 particular order -- an expert report from Dr. McKenna, a</p> <p>9 filed amended complaint, an expert report from</p> <p>10 Dr. McQuiston, the Michigan Department of Correction</p> <p>11 records, a deposition of Dr. Papendick, a record of</p> <p>12 replacement surgery at Jackson, a second Corizon expert</p> <p>13 report, a Notice of Deposition, and a third Corizon</p> <p>14 expert report. I can open any of these.</p> <p>15 Q. Okay. What was the material you reviewed? You</p> <p>16 said something about "request for services," or</p> <p>17 something like that. I might have misunderstood you,</p> <p>18 but it was before you started talking about the expert</p> <p>19 reports that you got.</p> <p>20 A. I don't understand the question.</p> <p>21 Q. What was the thing that you mentioned that you</p> <p>22 reviewed prior to mentioning -- I think it was</p> <p>23 Dr. McKenna's expert report.</p> <p>24 A. The amended complaint.</p> <p>25 Q. What was after that?</p>	<p style="text-align: right;">Page 9</p> <p>1 training and knowledge of medicine, and to make</p> <p>2 decisions regarding treatment?</p> <p>3 A. Yes.</p> <p>4 Q. And, in fact, you use your medical judgment every</p> <p>5 day to make decisions regarding what treatment options</p> <p>6 to use regarding the healthcare of your patients,</p> <p>7 correct?</p> <p>8 A. True.</p> <p>9 Q. And you would agree that medical professionals</p> <p>10 use medical judgment in making healthcare decisions</p> <p>11 regarding patients?</p> <p>12 A. Yes.</p> <p>13 Q. You agree, Doctor, that doctors/physicians could</p> <p>14 arrive at different treatment decisions using reasonable</p> <p>15 medical judgment?</p> <p>16 A. It's possible.</p> <p>17 Q. Your opinion in this case is that, Dr. Papendick,</p> <p>18 one of the defendants in this case, failed to exercise</p> <p>19 proper medical judgment in treating Mr. Jackson,</p> <p>20 correct?</p> <p>21 A. I was wondering if my final report was available.</p> <p>22 Q. Do you have that?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 MR. CORBET: Hey, Devlin, he said "final."</p>

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<p style="text-align: right;">Page 10</p> <p>1 Does that mean there's more than one?</p> <p>2 THE WITNESS: I don't have any belief that</p> <p>3 there's more than one.</p> <p>4 MR. CORBET: Okay.</p> <p>5 THE WITNESS: What was the question again?</p> <p>6 Does anybody have my report available, or not? And if</p> <p>7 the answer's no, then I can't answer that question,</p> <p>8 because I'd like to look at my report.</p> <p>9 BY MR. SCARBER:</p> <p>10 Q. Well, I may have a copy of your report that is</p> <p>11 written up, where I got comments on it. I don't know if</p> <p>12 I have an unredacted copy of your report. I thought you</p> <p>13 would have a copy of it for your deposition today.</p> <p>14 (Discussion off the record.)</p> <p>15 BY MR. SCARBER:</p> <p>16 Q. Dr. Silverman, your opinion in this case is that</p> <p>17 Dr. Papendick failed to exercise proper medical judgment</p> <p>18 in treating Mr. Jackson, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And based upon the failure to exercise proper</p> <p>21 medical judgment, you believe that Dr. Papendick</p> <p>22 breached the standard of care?</p> <p>23 A. Yes.</p> <p>24 Q. And you believe that, as a result of the</p> <p>25 decisions that he made based upon his medical judgment,</p>	<p style="text-align: right;">Page 12</p> <p>1 doctor's Exhibit A to his deposition. This will be</p> <p>2 marked out of order. I don't care.</p> <p>3 BY MR. SCARBER:</p> <p>4 Q. Did you get a copy of this deposition notice?</p> <p>5 A. Yes.</p> <p>6 Q. You got a copy of that?</p> <p>7 A. Yes.</p> <p>8 MR. SCARBER: And, Robin, what we'll do is</p> <p>9 we'll mark this deposition notice -- this is the</p> <p>10 deposition notice that we sent. We'll mark that as</p> <p>11 Exhibit B.</p> <p>12 BY MR. SCARBER:</p> <p>13 Q. Did you have an opportunity to review the</p> <p>14 deposition of the actual surgeon who performed</p> <p>15 Mr. Jackson's colostomy in this case?</p> <p>16 A. Everything I told you was all I reviewed. So the</p> <p>17 answer to that would be no.</p> <p>18 Q. So you didn't review Dr. Cansicar's testimony,</p> <p>19 where she testified that, when she referenced a standard</p> <p>20 of practice, what she was talking about was her standard</p> <p>21 of practice, and not what everybody else does?</p> <p>22 A. Same answer, I haven't reviewed it.</p> <p>23 Q. And that's because, Doctor, that every doctor has</p> <p>24 a certain standard that they might follow as a part of</p> <p>25 their practice, right?</p>
<p style="text-align: right;">Page 11</p> <p>1 resulting in a breach of the standard of care, as you</p> <p>2 say, that Mr. Jackson was injured, correct?</p> <p>3 MR. CORBET: Misstates testimony.</p> <p>4 BY MR. SCARBER:</p> <p>5 Q. Is that what you believe?</p> <p>6 A. Yes.</p> <p>7 Q. And are those opinions that you're prepared to</p> <p>8 discuss today?</p> <p>9 A. Yes.</p> <p>10 Q. Doctor, I do have -- you don't have your CV with</p> <p>11 you, right?</p> <p>12 A. I do.</p> <p>13 Q. You do have it?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Take a look at this hardcopy of that, and</p> <p>16 tell me if that's what you got; and that's probably --</p> <p>17 I'm going to tell you, we probably got that back in</p> <p>18 November of 2020, sometime around then.</p> <p>19 THE REPORTER: I can't hear you.</p> <p>20 THE WITNESS: I'm just saying, that's not</p> <p>21 mine, that's not mine. There's extra papers delivered</p> <p>22 to me.</p> <p>23 It's up-to-date.</p> <p>24 MR. SCARBER: Robin, what we're going to do</p> <p>25 is, we're going to mark his CV as exhibit -- the</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I haven't reviewed her testimony.</p> <p>2 Q. You can answer that question though; every doctor</p> <p>3 has a standard of a particular practice that they might</p> <p>4 do in their practice, and other doctors might have a</p> <p>5 different standard that they follow, right?</p> <p>6 A. Well, typically, there's an actual standard of</p> <p>7 care; and if you're talking about the art of medicine,</p> <p>8 some things are done differently to arrive at a similar</p> <p>9 endpoint.</p> <p>10 Q. But that's because every doctor's medical</p> <p>11 judgment is not the same, right?</p> <p>12 A. Medical judgment can be different.</p> <p>13 Q. And in your practice, Doctor, you've had patients</p> <p>14 who have gotten a second opinion about something you may</p> <p>15 have told them, or wanted to do with respect to their</p> <p>16 care, correct?</p> <p>17 A. It's possible. If you're asking me if I have a</p> <p>18 recollection of that, the answer would be no.</p> <p>19 Q. Do you have a recollection, Doctor, that maybe</p> <p>20 you, yourself, at some point, was sought out for maybe a</p> <p>21 second or third opinion from a patient that might have</p> <p>22 seen some other doctors prior to coming to you?</p> <p>23 A. I'm sure I've given second or third opinions. I</p> <p>24 don't have independent recollections of it.</p> <p>25 Q. But you should have over the course of your</p>

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<p style="text-align: right;">Page 14</p> <p>1 practice --</p> <p>2 A. I just answered that.</p> <p>3 Q. Well, let me finish my question.</p> <p>4 You believe that that has occurred over the</p> <p>5 course of your practice, since about 1998 or so?</p> <p>6 A. Since 2004, which is when I started seeing</p> <p>7 patients on my own, yes.</p> <p>8 Q. And you reviewed Dr. Papendick's testimony in</p> <p>9 this case it sounds like?</p> <p>10 A. Yes.</p> <p>11 Q. And you reviewed his testimony, where he</p> <p>12 testified about risk versus benefits of a colostomy</p> <p>13 reversal for Mr. Jackson?</p> <p>14 A. Yes.</p> <p>15 Q. And basically, you disagree with the medical</p> <p>16 judgment that he used in terms of risk or benefits for</p> <p>17 Mr. Jackson?</p> <p>18 A. True.</p> <p>19 Q. That's true? You disagree with it?</p> <p>20 A. That is true.</p> <p>21 Q. Dr. Cansicar, in this case, testified that there</p> <p>22 can be differences of opinion amongst doctors regarding</p> <p>23 colostomy reversals, concerning whether to do them. Do</p> <p>24 you agree with that?</p> <p>25 A. I didn't read the deposition.</p>	<p style="text-align: right;">Page 16</p> <p>1 the question, you can just tell me you can't answer it.</p> <p>2 If I ask you the same question, or it seems like it's a</p> <p>3 redundant question, you can answer the question, but you</p> <p>4 can't tell me how to ask the question.</p> <p>5 A. But I said to you that I haven't reviewed her</p> <p>6 testimony, yet you keep asking, "Have I reviewed her</p> <p>7 testimony?"</p> <p>8 Q. Are you here to answer questions?</p> <p>9 A. I'm certainly here to answer questions.</p> <p>10 Q. I would appreciate it if you do that. If you've</p> <p>11 got a problem with the way I'm asking questions --</p> <p>12 A. I've already said that.</p> <p>13 Q. You have an attorney here who is representing</p> <p>14 you, who can object. Just like you've gone to medical</p> <p>15 school, he's gone to law school. Just like you've</p> <p>16 passed boards, he's passed the bar exam, and he can say</p> <p>17 whatever, and tell an objection that he wants to make</p> <p>18 relative to the way I'm asking questions, okay?</p> <p>19 A. That's fine.</p> <p>20 Q. Okay. So you would agree, Doctor, then, that</p> <p>21 there can be differences of opinion amongst doctors as</p> <p>22 with respect to the timing of when to do a colostomy</p> <p>23 reversal?</p> <p>24 A. It's possible.</p> <p>25 Q. It's possible that there could be differences of</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Do you agree that there can be differences of</p> <p>2 opinions regarding doctors, concerning whether to do</p> <p>3 colostomy reversals?</p> <p>4 A. Doctors can review a patient's chart, a clinical</p> <p>5 history, and make a decision about when the colostomy</p> <p>6 should be reversed.</p> <p>7 Q. And they can reach different conclusions based</p> <p>8 upon what they review, right?</p> <p>9 A. It's possible.</p> <p>10 Q. Did you review her testimony, where she testified</p> <p>11 that there could be differences of opinion regarding</p> <p>12 colostomy reversals as to when they should be done, in</p> <p>13 terms of the timing?</p> <p>14 A. I didn't review her testimony.</p> <p>15 Q. But do you agree that --</p> <p>16 A. My question is, why do you keep asking if I</p> <p>17 reviewed the testimony, when I've told you I haven't</p> <p>18 reviewed the testimony? If you want to ask a question</p> <p>19 about the testimony, that's different, but my answer's</p> <p>20 going to be the same. I haven't reviewed her testimony.</p> <p>21 Q. Let me stop you right there. As the attorney,</p> <p>22 I'm going to be the one asking the questions. You're</p> <p>23 the one here to answer the questions. You don't have to</p> <p>24 question me, with all due respect, as to why I might be</p> <p>25 asking a question in a certain way. If you can't answer</p>	<p style="text-align: right;">Page 17</p> <p>1 medical judgment, differences of opinion?</p> <p>2 A. That's what I said.</p> <p>3 Q. The surgeon in this case, Dr. Silverman, who is</p> <p>4 Dr. Cansicar, testified to -- after looking at various</p> <p>5 articles and language from articles, she came to those</p> <p>6 conclusions that we just talked about.</p> <p>7 A. Which conclusions were those?</p> <p>8 Q. The conclusions that there could be differences</p> <p>9 among whether to do a reversal and the timing of when to</p> <p>10 do a reversal, if a doctor decides he wants to do one.</p> <p>11 A. Okay.</p> <p>12 Q. Would you agree, Doctor, that there would be, not</p> <p>13 only medical testimony to support that from physicians</p> <p>14 that will say that, but there would be articles that</p> <p>15 would acknowledge that fact as well?</p> <p>16 A. I don't need articles to tell me that.</p> <p>17 Physicians can look at patients' charts, patients'</p> <p>18 records, physical exams, and come to conclusions about</p> <p>19 when a colostomy can be reversed.</p> <p>20 Q. And they can come to conclusions as to whether or</p> <p>21 not it should be reversed at all, correct?</p> <p>22 A. True.</p> <p>23 Q. You, in particular, Dr. Silverman, you had no</p> <p>24 involvement in the medical decisions and medical</p> <p>25 judgments that were made concerning this particular</p>

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<p style="text-align: right;">Page 18</p> <p>1 case, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you were retained by the plaintiff, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And you were retained by the plaintiff to give an</p> <p>6 opinion to the plaintiff, right?</p> <p>7 A. I was retained by the plaintiff to review the</p> <p>8 medical records and come to a conclusion about the care</p> <p>9 delivered in the case, correct.</p> <p>10 Q. And the conclusions that you came to were</p> <p>11 supporting the plaintiff's position, correct?</p> <p>12 A. That is true.</p> <p>13 Q. And you were also paid by the plaintiff to review</p> <p>14 records and come to the conclusions that you would come</p> <p>15 to, correct?</p> <p>16 A. I was paid by the hour to review the records and</p> <p>17 come to a conclusion.</p> <p>18 Q. Dr. Silverman, do you ever call another doctor's</p> <p>19 office or medical facility, so that you can get</p> <p>20 information for further understanding about a particular</p> <p>21 patient that you might be treating?</p> <p>22 A. I don't understand the question. Can you</p> <p>23 rephrase?</p> <p>24 Q. Yes.</p> <p>25 As a doctor, if you know that a patient may have</p>	<p style="text-align: right;">Page 20</p> <p>1 records in this case document that, on at least two</p> <p>2 occasions, the healthcare providers in the Michigan</p> <p>3 Department of Corrections contacted the surgeon's office</p> <p>4 about Mr. Jackson's colostomy, and a potential reversal;</p> <p>5 and that, on both occasions, the surgeon's office stated</p> <p>6 that there were no urgent medical issues, and the</p> <p>7 colostomy is functional, and that there is no medical</p> <p>8 necessity?</p> <p>9 A. I am aware that those calls were made.</p> <p>10 Q. And you reviewed Dr. Papendick's testimony, where</p> <p>11 he discussed that, in his medical judgment, the risk for</p> <p>12 doing surgery for Mr. Jackson outweighed the benefit of</p> <p>13 doing the surgery, correct?</p> <p>14 A. I did read that testimony, in fact.</p> <p>15 Q. You disagree with that, right?</p> <p>16 A. I wholly disagree with that.</p> <p>17 Q. And Dr. Papendick testified that, in his medical</p> <p>18 judgment, based upon information he was provided,</p> <p>19 Mr. Jackson was having no medical problems back in</p> <p>20 April 2017/March of 2017. Are you aware of that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you disagree with that?</p> <p>23 A. Yes.</p> <p>24 Q. From the records that you saw, would you please</p> <p>25 tell me what physical medical problem that you saw, that</p>
<p style="text-align: right;">Page 19</p> <p>1 seen another doctor, or go to another hospital, or</p> <p>2 treated at another facility, would you ever call that</p> <p>3 particular hospital or doctor's office maybe to get some</p> <p>4 information about the particular patient, or some</p> <p>5 further information to help your understanding about a</p> <p>6 particular patient?</p> <p>7 A. If the record didn't accurately or fully answer</p> <p>8 the questions that I had in mind on this particular</p> <p>9 patient, if there wasn't enough information, then I</p> <p>10 would, in fact, call the physician.</p> <p>11 Q. Okay. And you would do that out of concern for</p> <p>12 the patient's care, correct?</p> <p>13 A. I would do that to make sure that the information</p> <p>14 that I had was complete before I delivered care to the</p> <p>15 patient.</p> <p>16 Q. And you feel like that is something that is a</p> <p>17 safe practice to do concerning a patient, right?</p> <p>18 A. I think it's a reasonable practice to do, and</p> <p>19 it's safe if you need information that is not present.</p> <p>20 Q. Information that you might obtain, the facts that</p> <p>21 you might obtain might assist you in the medical</p> <p>22 decisions and judgments that you are going to be making</p> <p>23 about that particular patient, correct?</p> <p>24 A. It may or it may not assist you.</p> <p>25 Q. Dr. Silverman, are you aware that the medical</p>	<p style="text-align: right;">Page 21</p> <p>1 Mr. Jackson had back in March or April of 2017, with</p> <p>2 respect to his colostomy?</p> <p>3 A. The records will reflect that Mr. Jackson, in</p> <p>4 fact, developed not only anxiety, psychological issues</p> <p>5 and stress about having a colostomy that was perfectly</p> <p>6 able to be reversed, but also that he was -- tried to,</p> <p>7 in fact, hide the smell of his colostomy, and the fact</p> <p>8 that he was assaulted, and punched in the colostomy</p> <p>9 because of his issues, causing, at least on paper,</p> <p>10 issues regarding his psychology.</p> <p>11 Q. Are you a psychologist, Dr. Silverman?</p> <p>12 A. No, but --</p> <p>13 Q. I just want you to answer my question.</p> <p>14 A. I'm not done answering my question.</p> <p>15 Q. Are you a psychologist?</p> <p>16 A. I'm not done --</p> <p>17 Q. Go ahead.</p> <p>18 A. -- answering my question.</p> <p>19 Q. If your answer is you are not a psychologist, yes</p> <p>20 or no, go ahead.</p> <p>21 A. We can stop this right now. If you're not going</p> <p>22 to let me answer my question, we can finish this now.</p> <p>23 What's it going to be, Counselor?</p> <p>24 Q. Listen, you're here to testify.</p> <p>25 A. I am speaking.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. If I ask a yes or no question --</p> <p>2 A. You're not letting me answer my question.</p> <p>3 Q. Go ahead. I would ask you to direct --</p> <p>4 MR. CORBET: Answer the question. We'll</p> <p>5 discuss it on cross when he's done asking his questions,</p> <p>6 okay?</p> <p>7 THE WITNESS: To answer the question, that</p> <p>8 I'm not a psychologist. I have dealt with numerous</p> <p>9 patients over the last 17 years --</p> <p>10 BY MR. SCARBET:</p> <p>11 Q. Okay. You've answered my question. Thank you.</p> <p>12 So the yes or no answer to my question,</p> <p>13 Dr. Silverman, is you're not a psychologist, correct?</p> <p>14 Yes or no?</p> <p>15 A. I'm not going to answer that.</p> <p>16 Q. Have you gone to school for psychology?</p> <p>17 A. No.</p> <p>18 Q. Do you have a psychological degree?</p> <p>19 A. I don't think there's such things as</p> <p>20 psychological degrees.</p> <p>21 Q. Do you have a Ph.D. in psychology?</p> <p>22 A. No.</p> <p>23 Q. Do you have a medical degree in psychiatry?</p> <p>24 A. No.</p> <p>25 Q. Do you prescribe medications for depression or</p>	<p style="text-align: right;">Page 24</p> <p>1 problems. Other than psychological and anxiety</p> <p>2 problems, are you aware of any other medical problems,</p> <p>3 physical conditions that we're talking about, that</p> <p>4 Mr. Jackson would have had in March or April of 2017?</p> <p>5 A. No.</p> <p>6 Q. Dr. Papendick testified that the patient was</p> <p>7 having absolutely no complaints, no medical problems,</p> <p>8 but was just saying he wanted a reversal back in March</p> <p>9 or April of 2017. Did you read that in his deposition?</p> <p>10 A. Yes.</p> <p>11 Q. Did you read in any record, in March or April</p> <p>12 of 2017, when this was reviewed by Dr. Papendick, where</p> <p>13 the patient was making any medical complaints, talking</p> <p>14 about pain, or that his colostomy wasn't functioning</p> <p>15 properly?</p> <p>16 A. No.</p> <p>17 Q. In fact, there's nothing in the records that say</p> <p>18 anything like that, is there?</p> <p>19 A. True.</p> <p>20 Q. And did you review Mr. Jackson's testimony in</p> <p>21 this case?</p> <p>22 A. Yes.</p> <p>23 Q. And when did you review that?</p> <p>24 A. I think that was more recently.</p> <p>25 Q. Was it, like, within the last month?</p>
<p style="text-align: right;">Page 23</p> <p>1 anxiety as a result of a psychiatric condition?</p> <p>2 A. No.</p> <p>3 Q. Is it fair to say, Doctor, that you are not a</p> <p>4 licensed psychologist or psychiatrist?</p> <p>5 A. Yes. You can lower your voice too.</p> <p>6 Q. Thank you. Now I'm going to go back to my</p> <p>7 original question.</p> <p>8 Aside from psychological problems that you've</p> <p>9 identified, and anxiety problems that you've identified,</p> <p>10 can you tell me an actual physical medicine condition</p> <p>11 that Mr. Jackson had with respect to his colostomy back</p> <p>12 in April or March of 2017?</p> <p>13 A. He was punched and it had blood in it.</p> <p>14 Q. That happened in March of 2017. So I'm going to</p> <p>15 ask the question again.</p> <p>16 Other than -- with respect to him having an</p> <p>17 actual physical condition that can be diagnosed by a</p> <p>18 medical doctor, a physical problem with his colostomy</p> <p>19 that he had had by Dr. Kansakar back in December</p> <p>20 of 2016, did you find in the records a specific medical</p> <p>21 related injury, a physical medicine injury that</p> <p>22 Mr. Jackson was experiencing in March of 2017 or April</p> <p>23 of 2017?</p> <p>24 A. Not other than what I've already said.</p> <p>25 Q. Well, you mention psychological and anxiety</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. Was it within the last week?</p> <p>3 A. I don't recall. Possibly.</p> <p>4 Q. Did you review his testimony, that as soon as he</p> <p>5 got to prison from the St. Clair County Jail, he was</p> <p>6 planning to file a lawsuit against the jail because he</p> <p>7 hadn't gotten a reversal in jail?</p> <p>8 A. Yes. I think he also threatened that in the</p> <p>9 records as well, the medical records.</p> <p>10 Q. And did you review where he testified that he</p> <p>11 essentially came to prison, saying he would sue the</p> <p>12 prison too, even though he had no physical complaints</p> <p>13 about the colostomy?</p> <p>14 A. I do recall that.</p> <p>15 Q. And Dr. Papendick testified about Mr. Jackson</p> <p>16 having concerns -- strike the question. I'll restate</p> <p>17 it.</p> <p>18 Dr. Papendick testified that he was actually</p> <p>19 having concerns, that the surgery could actually harm</p> <p>20 Mr. Jackson, didn't he?</p> <p>21 A. Yes.</p> <p>22 Q. And Dr. Kansakar testified that there are</p> <p>23 significant risks to Mr. Jackson for things like a</p> <p>24 potential need for a re-operation, for leaking after the</p> <p>25 reversal surgery, for damage to the surrounding</p>



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<p style="text-align: right;">Page 26</p> <p>1 structure, including the ureter and genitourinary</p> <p>2 system, infection, heart attack, stroke, death? You</p> <p>3 agree that those risks can occur, correct, Doctor?</p> <p>4 A. Those are the general risks of abdominal surgery.</p> <p>5 Q. And those are the same risks that you actually</p> <p>6 have to tell your patients when you're getting ready to</p> <p>7 perform a procedure like this on them?</p> <p>8 A. Not only are they the same risks, but they are</p> <p>9 the same risks that exist whether you're in prison or</p> <p>10 whether you're out of prison.</p> <p>11 Q. I'm going to ask my question again.</p> <p>12 A. All right. You ask your question all you want,</p> <p>13 Counsel.</p> <p>14 Q. But I'm going to ask my question until I get an</p> <p>15 answer.</p> <p>16 A. Ask it again.</p> <p>17 Q. My question is, these are the same risks that you</p> <p>18 provide to your patients before you get ready to perform</p> <p>19 a procedure on them, correct?</p> <p>20 A. Correct.</p> <p>21 Q. Thank you.</p> <p>22 And even the records of the surgeon who performed</p> <p>23 the colostomy reversal on Mr. Jackson in June of 2019</p> <p>24 recognized the same risks. Did you see that in the</p> <p>25 records, or did you not review those records?</p>	<p style="text-align: right;">Page 28</p> <p>1 consent after lengthy discussion."</p> <p>2 Q. Thank you.</p> <p>3 This is the surgical report of June 19th, 2019,</p> <p>4 by Dr. Weber. It is page 574 of 579 of the DMC medical</p> <p>5 records. I won't mark it.</p> <p>6 Dr. Silverman, colostomy reversals are elective</p> <p>7 surgeries, right?</p> <p>8 A. Yes, they're not emergencies. They're not</p> <p>9 emergent procedures, right.</p> <p>10 Q. They can be performed, or oftentimes not</p> <p>11 performed, correct?</p> <p>12 A. They can be performed, and if there are</p> <p>13 contraindications, they can be not performed.</p> <p>14 Q. And many patients elect to have a colostomy</p> <p>15 reversal, and many don't elect to have it, correct?</p> <p>16 A. The overwhelming majority of patients elect to</p> <p>17 have it reversed, and rarely someone will not elect to</p> <p>18 have it reversed.</p> <p>19 Q. But you have seen that there are patients who get</p> <p>20 it and patients who don't get it, right?</p> <p>21 A. I have, as I just testified to.</p> <p>22 Q. And there's nothing mandating that the reversal</p> <p>23 be done, correct, unless there is some kind of</p> <p>24 serious -- serious damage occurring to the patient,</p> <p>25 making it an emergent situation, right?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Which records?</p> <p>2 Q. The records where he gets his colostomy reversal.</p> <p>3 A. I did review those records.</p> <p>4 Q. You received the DMC records?</p> <p>5 A. I believe I reviewed a -- maybe just the</p> <p>6 operative report. Maybe not the entire record.</p> <p>7 Q. To speed this up, is that something that you</p> <p>8 might have looked at?</p> <p>9 A. Yes.</p> <p>10 Q. It's front and back.</p> <p>11 Does that look like something that you would have</p> <p>12 reviewed, Doctor?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Let me see that back for a second. I</p> <p>15 appreciate it.</p> <p>16 Can you read this last sentence, here, for the</p> <p>17 record, Doctor? Just read the last sentence of that</p> <p>18 paragraph.</p> <p>19 A. "After patient was made aware of all the risks</p> <p>20 and benefits of the procedure, including, but not</p> <p>21 limited to the risk of heart attack, stroke, death,</p> <p>22 infection, the potential need for re-operation, and the</p> <p>23 potential for a leak, or potential for damage to</p> <p>24 surrounding structures, including the ureter and</p> <p>25 genitourinary system, the patient signed informed</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I don't understand the question.</p> <p>2 Q. There's nothing that is mandated for the patient,</p> <p>3 that he actually has to have a colostomy reversal,</p> <p>4 correct?</p> <p>5 MR. CORBET: Objection, vague.</p> <p>6 THE WITNESS: Mandated to have a colostomy</p> <p>7 reversal?</p> <p>8 BY MR. SCARBUR:</p> <p>9 Q. I'll rephrase the question.</p> <p>10 Is it mandating for a patient, that he must</p> <p>11 undergo a colostomy reversal?</p> <p>12 A. If a patient does not want to undergo a colostomy</p> <p>13 reversal, the patient does not have to undergo a</p> <p>14 colostomy reversal.</p> <p>15 Q. And you're not aware of any particular mandate</p> <p>16 that says, after you have a colostomy, you must</p> <p>17 100 percent, absolutely have to have a colostomy</p> <p>18 reversal?</p> <p>19 A. Correct.</p> <p>20 Q. In fact, Doctor, in both of Mr. Jackson's visits</p> <p>21 with Dr. Kansakar in December of 2016 and January</p> <p>22 of 2017, are you aware that she testified that he had no</p> <p>23 complaints regarding his colostomy?</p> <p>24 A. I didn't review her testimony.</p> <p>25 Q. Are you aware from looking at the records? You</p>

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<p style="text-align: right;">Page 30</p> <p>1 said you reviewed the records. Did you review the</p> <p>2 records?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware from reviewing the records, that</p> <p>5 when she saw him in the follow-up visits, he was in good</p> <p>6 condition, productive, functioning properly, and had no</p> <p>7 pain issues?</p> <p>8 A. I'm aware of that.</p> <p>9 Q. You have no reason to disagree with her</p> <p>10 examination in her records, do you?</p> <p>11 A. I have no reason to disagree with her.</p> <p>12 Q. Doctor, you mentioned in your report, that the</p> <p>13 longer a reversal is delayed, the more likely the chance</p> <p>14 of developing fibrosis in the pelvis, where the rectal</p> <p>15 stump sits, and it can cause a difficult reconnection</p> <p>16 procedure, and poor functional results of incontinence</p> <p>17 and stricture formation. Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. None of these problems existed with Mr. Jackson,</p> <p>20 did they?</p> <p>21 A. Nope.</p> <p>22 Q. In fact, he's functioning just fine after his</p> <p>23 reversal that occurred in June 2019, right?</p> <p>24 A. Yes.</p> <p>25 Q. So regardless of whether he got it in two months,</p>	<p style="text-align: right;">Page 32</p> <p>1 statement. There were two statements.</p> <p>2 THE WITNESS: I don't remember what I said.</p> <p>3 BY MR. SCARBER:</p> <p>4 Q. My question was, are you aware that Mr. Jackson</p> <p>5 is not even alleging claims in this particular lawsuit</p> <p>6 for any physical damage that occurred to him as a result</p> <p>7 of not having his colostomy reversal performed any</p> <p>8 sooner?</p> <p>9 A. And I think I said I'm not aware of that, but I'm</p> <p>10 not disputing it either.</p> <p>11 Q. Okay. I believe you did.</p> <p>12 He's not claiming, Dr. Silverman, that he had --</p> <p>13 that his reconnection procedure was difficult?</p> <p>14 A. I don't think so.</p> <p>15 Q. He's not claiming that he's got any kind of poor</p> <p>16 functioning, correct?</p> <p>17 A. Correct.</p> <p>18 Q. In fact, Dr. Silverman, after Mr. Jackson went</p> <p>19 for his colostomy reversal in 2019, he hasn't seen any</p> <p>20 doctor in two years almost, for any complaints regarding</p> <p>21 his colostomy or any of the organs that are involved</p> <p>22 with his colostomy. Are you aware of that?</p> <p>23 A. I don't know those facts. I'm not disputing them</p> <p>24 either.</p> <p>25 Q. And in all sincerity, Dr. Silverman, since</p>
<p style="text-align: right;">Page 31</p> <p>1 one year, two years, two-and-a-half years, Mr. Jackson</p> <p>2 did not suffer any adverse injury or medical condition</p> <p>3 as a result of not getting the reversal back in 2017,</p> <p>4 correct?</p> <p>5 A. He didn't suffer a physical complication from his</p> <p>6 reversal surgery.</p> <p>7 Q. Thank you.</p> <p>8 Are you aware, Dr. Silverman, that Mr. Jackson is</p> <p>9 not even alleging claims in this lawsuit for any</p> <p>10 physical damage for not having the colostomy reversal</p> <p>11 sooner?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. Are you aware that Mr. Jackson is not even</p> <p>14 alleging in this lawsuit that he sustained any physical</p> <p>15 damage for not having his colostomy reversal sooner?</p> <p>16 A. I'm not --</p> <p>17 THE REPORTER: I'm sorry, wait.</p> <p>18 THE WITNESS: I'm not disputing that either.</p> <p>19 THE REPORTER: One second. There was an</p> <p>20 objection. I didn't hear it.</p> <p>21 MR. CORBET: I said objection, foundation.</p> <p>22 THE REPORTER: And, Doctor, if you could</p> <p>23 repeat your answer.</p> <p>24 MR. SCARBER: You didn't hear his answer?</p> <p>25 THE REPORTER: No. I got the last</p>	<p style="text-align: right;">Page 33</p> <p>1 Mr. Jackson's release from prison in May 2019,</p> <p>2 Mr. Jackson has been shot twice, been involved in a car</p> <p>3 accident, but after his reversal was completed, he has</p> <p>4 never been to any doctor for any problems, specifically,</p> <p>5 because his reversal did not occur at any point any</p> <p>6 sooner. Are you aware of that?</p> <p>7 A. No.</p> <p>8 Q. Do you dispute that?</p> <p>9 A. No.</p> <p>10 Q. You weren't shown any records disputing that,</p> <p>11 correct?</p> <p>12 A. I wasn't shown any records at all like that.</p> <p>13 Q. And you testified earlier, and I think I showed</p> <p>14 you while you were testifying, the operative report from</p> <p>15 his colostomy reversal.</p> <p>16 Are you aware that, when he got the colostomy</p> <p>17 reversal done, Dr. Weber's report indicates that he</p> <p>18 wasn't having any issues just before he did his</p> <p>19 reversal?</p> <p>20 A. I don't recall that. I'm not disputing that.</p> <p>21 Q. I'll just show it to you, and I'll reference page</p> <p>22 575 of that operative report. Can you read that right</p> <p>23 there? Just the language in the first paragraph.</p> <p>24 A. "He has no issues."</p> <p>25 Q. Dr. Silverman, is it true, or are you aware that</p>

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<p style="text-align: right;">Page 34</p> <p>1 several courts have found that your testimony and 2 opinions lack credibility?</p> <p>3 A. Am I aware that courts have found my testimony to 4 be -- lack of credibility, is that the question?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. You've never heard of a court, basically, saying 8 that your testimony lacked credibility, or you were 9 testifying to things that you weren't even qualified to 10 testify to?</p> <p>11 A. There are two instances that I will put on the 12 record, where I was not allowed to testify.</p> <p>13 The first instance was a case in Tennessee; and 14 if you are familiar with Tennessee Caselaw, you have to 15 be living in the state one year before the incident, and 16 that state must be touching a border of Tennessee. I 17 had moved back to Texas from St. Louis more than one 18 year before the event, and Texas does not touch the 19 border of Tennessee, and, therefore, I wasn't allowed to 20 testify.</p> <p>21 There was another instance in, I believe, 22 Michigan, in fact, where there was a case against a 23 general surgeon, and I was specializing in colorectal 24 surgery, and was not allowed to give testimony because 25 the overwhelming majority of my work was in colorectal</p>	<p style="text-align: right;">Page 36</p> <p>1 versus Dean case; that is, D-e-a-n. It is 2018 2 Mich.App.Lexus 57. That's docket No. 334243.</p> <p>3 You ran into a problem in Ohio as well, where 4 your credibility and opinions were found to lack -- be 5 lacking in credibility when you tried to give expert 6 testimony there?</p> <p>7 A. I don't recall that.</p> <p>8 Q. The records of the case of Gysegem versus Ohio 9 State University, Wexner Medical Center, G-y-s-e-g-e-m; 10 Wexner is W-e-x-n-e-r. This is a Court of Claims of 11 Ohio, September 8th, 2020. Case ID number for that is 12 2018-00113JD. The cite for that is going to be 2020 13 Ohio Misc, M-i-s-c, period, Lexus 152.</p> <p>14 Does any of that ring a bell for you?</p> <p>15 A. No.</p> <p>16 MR. CROSS: Devlin, can you spell the first 17 name of that case in Ohio again, please.</p> <p>18 MR. SCARBET: Yes, it's G-y-s-e-g-e-m.</p> <p>19 MR. CORBET: Thank you.</p> <p>20 BY MR. SCARBET:</p> <p>21 Q. In that particular case, Dr. Silverman, the court 22 found that your opinions were biased and less credible 23 than the other witnesses.</p> <p>24 A. I don't know anything about it.</p> <p>25 Q. Why don't I let you look at it, and then I'll ask</p>
<p style="text-align: right;">Page 35</p> <p>1 surgery and not general surgery. If there's something 2 I'm missing, please tell me.</p> <p>3 Q. So let's talk about the Michigan case. Thank you 4 for mentioning that Tennessee case. Let's talk about 5 the Michigan case first.</p> <p>6 It was a case called Wilson versus Dean, a Court 7 of Appeals decision in January 9th of 2018; and in that 8 particular case, you indicated that you were trying to 9 testify about a general surgery standard of practice, 10 and the court found that you were not even sufficiently 11 practicing general surgery in order to testify about it, 12 correct?</p> <p>13 A. I stated that for the record, yes.</p> <p>14 Q. So the court in Wilson, in Michigan, the state 15 that we're -- that this case involves, the court in 16 Wilson found that you were trying to give opinions that 17 you weren't even qualified to give, right?</p> <p>18 A. I'm qualified. I am a practicing general 19 surgeon. The rules in Michigan, from my 20 understanding -- I'm not a lawyer -- is I wasn't doing 21 enough general surgery in order to be an expert in 22 general surgery, because the overwhelming majority of my 23 work was colorectal surgery, even though I'm a full 24 functioning general surgeon.</p> <p>25 Q. And just for the record, the cite for the Wilson</p>	<p style="text-align: right;">Page 37</p> <p>1 you some questions about it.</p> <p>2 A. Okay.</p> <p>3 Q. All right. So the court in that case, from which 4 you just read, stated, "Dr. Silverman has demonstrated a 5 willingness to testify outside his area of expertise," 6 correct? End quote.</p> <p>7 A. That's what it says.</p> <p>8 Q. It says, quote -- this is the courts findings -- 9 "20 to 25 percent of Dr. Silverman's income is generated 10 from Dr. Silverman's case reviews and testimony, with 11 about 95 percent of the reviews being performed on 12 behalf of plaintiffs," end quote. Is that true?</p> <p>13 A. Yes.</p> <p>14 Q. It also said in that case, that you actually 15 claim to have performed hundreds of surgical procedures, 16 but that the overwhelming majority were earlier in your 17 career, right?</p> <p>18 A. Are you talking about a specific surgery?</p> <p>19 Q. I'm talking about the court's findings about your 20 credibility in this Ohio case. Did you see that?</p> <p>21 A. You're going to have to put it in context for 22 the --</p> <p>23 Q. Do you want me to read it?</p> <p>24 A. Yeah.</p> <p>25 Q. "Dr. Silverman -- quote, "While Dr. Silverman</p>

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<p style="text-align: right;">Page 38</p> <p>1 asserts that he has performed hundreds of appendectomies 2 and colocecstomies in his career, Dr. Silverman admits 3 that he performed the overwhelming majority of 4 colocecstomies early in his career, when he was engaged 5 in more general surgery."</p> <p>6 A. That's true. Absolutely true. I've always 7 testified that I've skewed toward colorectal surgery in 8 my career and general surgery. Absolutely true, and I 9 testified to the truth.</p> <p>10 Q. Well, the court indicates here that you were 11 actually misrepresenting that you had some kind of 12 expertise in an area that you didn't have expertise in.</p> <p>13 A. The court is saying that I did most of my general 14 surgery in appendectomies and colocecstomies earlier in 15 my career, which I testified to truthfully.</p> <p>16 Q. In also says here, quote, "With no evidence, 17 Dr. Silverman suggested that a doctor, Dr. Eiferman, 18 exhibited a lack of care for his patients," end quote.</p> <p>19 The court's saying here, Doctor, that, with no 20 evidence, you made a suggestion about another doctor 21 doing something wrong. Why would you do that?</p> <p>22 A. I'd have to review the case, and you presenting 23 me this in the last two or three minutes, doesn't nearly 24 prepare myself for these kind of questions. Like this 25 case and other cases, I reviewed the records, and I came</p>	<p style="text-align: right;">Page 40</p> <p>1 risk that the risk of dying from anesthesia is three 2 percent. That didn't happen either, Counselor.</p> <p>3 Q. So you recognize that there are risks, right?</p> <p>4 A. Asked and answered. I've testified to that.</p> <p>5 Q. Thanks for your objection. I appreciate it, but 6 my question is more directed to the fact that, if you 7 write your report in November of 2020, and we know from 8 the medical records, at least from 2019 forward, that 9 Mr. Jackson hasn't had any complications at all, no 10 problems reconnecting anything, no problems with 11 incontinence, why would you even suggest anything like 12 that is possible in your report, when you have no 13 evidence for it?</p> <p>14 A. I will answer that question with a question. Why 15 would Dr. Papendick suggest that all of these risks and 16 all these complications from anesthesia; and, in fact, 17 Dr. Kansakar, the risk of having surgery, none of that 18 happened either, Counselor, which leads me to believe 19 that this thing could have been done earlier.</p> <p>20 Q. Let me ask you a question -- and I'm just going 21 to stop you and move to strike for being nonresponsive.</p> <p>22 Dr. Papendick was an expert in this case.</p> <p>23 Dr. Papendick hasn't been driven -- gone through the 24 courts and been called biased and not credible.</p> <p>25 My question to you is, you wrote a report almost</p>
<p style="text-align: right;">Page 39</p> <p>1 to an opinion about it.</p> <p>2 Q. The court says -- it goes on to say, quote, "Such 3 a suggestion demonstrates bias and affects 4 Dr. Silverman's overall credibility," end quote.</p> <p>5 Are you aware, Doctor, that there's not many 6 courts that go on the record and say that an expert 7 witness lacks credibility and is biased?</p> <p>8 A. I'm not aware.</p> <p>9 Q. Have you heard about the courts saying that about 10 a lot of other medical experts?</p> <p>11 A. I'm not aware.</p> <p>12 Q. And yet, in this case we're here for today, all 13 of this business that you're talking about, about 14 Mr. Jackson having these potential problems from not 15 getting a colostomy reversal sooner, you have absolutely 16 no evidence to suggest, from the records, that any of 17 those problems ever occurred with Mr. Jackson that you 18 were talking about, or these complications about him not 19 getting a reversal sooner, right?</p> <p>20 A. I didn't testify that he didn't have any 21 complications.</p> <p>22 Q. You put in your report, Doctor, that if he 23 doesn't get the reversal sooner, he would have all of 24 these problems and complications, didn't you?</p> <p>25 A. I said it was a risk, such as Dr. Papendick put a</p>	<p style="text-align: right;">Page 41</p> <p>1 a year-and-a-half later, talking about some things that 2 could have happened to this guy after surgery that never 3 happened, and I want to know why. Why would you say 4 something like that?</p> <p>5 A. Because it's the truth.</p> <p>6 Q. Okay.</p> <p>7 A. The longer you wait to reverse a colostomy, the 8 more intraabdominal scarring, and the other things that 9 I mentioned can happen. It doesn't mean it's going to. 10 Nothing is a hundred percent, Counselor, but it doesn't 11 mean that it can't happen.</p> <p>12 Q. Let me ask you this question then. So it sounds 13 like, Dr. Silverman, what you're saying is that, because 14 these things could happen, it was worth you considering 15 these types of things when you were issuing your expert 16 report, correct?</p> <p>17 A. Absolutely. Absolutely.</p> <p>18 Q. It was worth you mentioning that these things 19 could happen, that these are risks that could happen, 20 when you were trying to consider, with your medical 21 judgment, what the standard should be, right?</p> <p>22 A. That's right.</p> <p>23 Q. Thank you.</p> <p>24 When was the last time you performed a colostomy 25 reversal?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Last week. I usually do one or two a week.</p> <p>2 Q. When's the last time you performed a colostomy?</p> <p>3 A. A colostomy? Last week.</p> <p>4 Q. Doctor, what I'm going to do is rest at this</p> <p>5 particular time, because I want to see if I can pop-up</p> <p>6 some of the stuff we got; and we've got another attorney</p> <p>7 here, a Mr. Corbet, who is probably going to have some</p> <p>8 questions for you as well. So why don't I do that.</p> <p>9 Thank you for your time. I appreciate it.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. CORBET:</p> <p>12 Q. Hi, Doctor. Can you hear me okay?</p> <p>13 A. Yes.</p> <p>14 Q. My name's Dan Corbet. I represent the medical</p> <p>15 providers at St. Clair County Jail, okay?</p> <p>16 A. Who do you represent?</p> <p>17 Q. The -- it's actually the nurse and -- at the</p> <p>18 saint -- and the company that employed her, or that she</p> <p>19 was working with at the St. Clair County Jail. Do you</p> <p>20 follow me or no?</p> <p>21 MR. SCARBBER: So he was in jail first, and</p> <p>22 then he goes to prison after he was in jail.</p> <p>23 THE WITNESS: Right.</p> <p>24 MR. SCARBBER: So he's alleging -- there's</p> <p>25 allegations that the jail didn't do something and that</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Has your license ever been revoked or suspended?</p> <p>2 A. No.</p> <p>3 Q. Have you ever had any disciplinary action with</p> <p>4 respect to staff privileges anywhere?</p> <p>5 A. No.</p> <p>6 Q. Has anybody filed a complaint against your</p> <p>7 license as far as you know?</p> <p>8 A. Not as far as I know.</p> <p>9 Q. Did anybody -- Are you a member of any medical</p> <p>10 societies?</p> <p>11 A. The American Society of Colorectal Surgeons and</p> <p>12 the American College of Surgeons.</p> <p>13 Q. Has anybody filed a complaint against you with</p> <p>14 respect to those societies?</p> <p>15 A. Not that I know of.</p> <p>16 Q. And you have done -- How many cases in Michigan</p> <p>17 have you reviewed?</p> <p>18 A. This year you said?</p> <p>19 Q. No, just in general.</p> <p>20 A. Is the question, how many cases total have I ever</p> <p>21 reviewed?</p> <p>22 Q. In Michigan.</p> <p>23 A. In Michigan, excuse me.</p> <p>24 I don't know. Maybe four or five.</p> <p>25 Q. Is there one particular state that you do most of</p>
<p style="text-align: right;">Page 43</p> <p>1 the prison didn't do something afterwards.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. SCARBBER: He's the first guy.</p> <p>4 MR. CORBET: Thank you, Devlin. I</p> <p>5 appreciate that.</p> <p>6 BY MR. CORBET:</p> <p>7 Q. So do you follow along with that, Doctor?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Let me go back a few things, and your -- I</p> <p>10 guess I can start with your medical school. Where did</p> <p>11 you go to medical school?</p> <p>12 A. University of Missouri, Kansas City.</p> <p>13 Q. And where did you do a residency at?</p> <p>14 A. St. Louis University.</p> <p>15 Q. Did you do a fellowship in colorectal?</p> <p>16 A. Yes.</p> <p>17 Q. Where was that at?</p> <p>18 A. William Beaumont.</p> <p>19 Q. And you're board certified in?</p> <p>20 A. General surgery and colorectal surgery.</p> <p>21 Q. And what years were you board certified in those</p> <p>22 disciplines?</p> <p>23 A. 2003-ish.</p> <p>24 Q. Both of them were around the same time?</p> <p>25 A. Around the same time, one after the other.</p>	<p style="text-align: right;">Page 45</p> <p>1 your reviews out of?</p> <p>2 A. I tend to be a preponderance in Tennessee.</p> <p>3 Q. Any idea why?</p> <p>4 A. Because of what I just discussed about experts in</p> <p>5 Tennessee, in terms of the Tennessee Laws have to be</p> <p>6 touching a continuous state.</p> <p>7 Q. Where you practice now is -- you connect with</p> <p>8 Tennessee?</p> <p>9 A. That is correct.</p> <p>10 Q. Is that why you moved from Texas to Tennessee?</p> <p>11 A. I've never moved to Tennessee.</p> <p>12 Q. Oh, I'm sorry. To St. Louis, my bad.</p> <p>13 A. I'm from St. Louis. That's not the reason I</p> <p>14 moved.</p> <p>15 Q. Sorry to be redundant, but you've read the</p> <p>16 deposition of Dr. Kansakar, Mr. Jackson, and</p> <p>17 Dr. Papendick; is that right?</p> <p>18 A. I did not read the deposition of -- the first</p> <p>19 deposition you mentioned.</p> <p>20 Q. I'm sorry. All right. My bad again.</p> <p>21 You read the depositions of Mr. Jackson and</p> <p>22 Dr. Papendick, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you said -- I think you said you might have</p> <p>25 read Mr. Jackson's in the last week or so maybe; is that</p>

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<p style="text-align: right;">Page 46</p> <p>1 fair?</p> <p>2 A. Something like that.</p> <p>3 Q. And Dr. Papendick's, when did you read that one</p> <p>4 do you think?</p> <p>5 A. In the last couple of weeks, two, three weeks. I</p> <p>6 can't recall.</p> <p>7 Q. And have you asked to read the deposition of</p> <p>8 Dr. Kansakar?</p> <p>9 A. I can't recall.</p> <p>10 Q. But you've known about Dr. Kansakar -- Strike</p> <p>11 that.</p> <p>12 So earlier in the deposition you said something</p> <p>13 about a final report, and I'm looking at your report</p> <p>14 from December of 2020, and what threw me off is it's</p> <p>15 labeled, "Preliminary Expert Report."</p> <p>16 So my question is, is there one report, or are</p> <p>17 there two, a preliminary and final?</p> <p>18 A. I don't know. I'm assuming that my preliminary</p> <p>19 is my final.</p> <p>20 Q. Okay. Are you aware that the nurse at the</p> <p>21 jail -- her first name is Colleen; that she contacted</p> <p>22 Dr. Kansakar's office on at least one or two occasions</p> <p>23 to discuss the colostomy reversal with that office?</p> <p>24 A. Yes, I think we've already visited this line of</p> <p>25 questioning.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. I'm sorry.</p> <p>2 MR. CORBET: Can you hear me okay, Robin?</p> <p>3 THE REPORTER: Yes.</p> <p>4 (Wherein, question is read back</p> <p>5 upon request.)</p> <p>6 THE WITNESS: Who pays for it? Was that the</p> <p>7 question?</p> <p>8 BY MR. CORBET:</p> <p>9 Q. Yes.</p> <p>10 A. No, I don't know who pays for it.</p> <p>11 Q. Do you know if nurse Colleen had the authority to</p> <p>12 grant or deny out-of-jail appointments?</p> <p>13 A. I don't know that.</p> <p>14 Q. Do you know if Mr. Jackson had a history of</p> <p>15 violence?</p> <p>16 A. While I was making my report, I think that I read</p> <p>17 where he was in jail for possibly armed robbery; and</p> <p>18 then, of course, counselor over here mentioned some</p> <p>19 stuff that happened, perhaps -- I forget what he said,</p> <p>20 after he got out of or before he got out of, an assault</p> <p>21 or something like that. That's what I know of.</p> <p>22 Q. So at least, as of the time when his colostomy --</p> <p>23 where he had the colostomy while in the county jail, he</p> <p>24 had a history of violence; at least, as far as you know,</p> <p>25 armed robbery. Fair enough?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. So you're aware that she contacted the</p> <p>2 office. I'm specifically talking about the nurse.</p> <p>3 A. Yes.</p> <p>4 Q. I'm not sure you went through that specifically</p> <p>5 before.</p> <p>6 And what was she told by Dr. Kansakar's office or</p> <p>7 office manager?</p> <p>8 A. Something along the lines of, it's not an</p> <p>9 emergency to reverse the ostomy.</p> <p>10 Q. Was she also told it's based on the personal</p> <p>11 comfort of the patient?</p> <p>12 A. I don't recall.</p> <p>13 Q. Can you tell us how many times Mr. Jackson was</p> <p>14 taken out of the St. Clair County Jail to some sort of a</p> <p>15 medical appointment?</p> <p>16 A. I don't know offhand how many times he was taken.</p> <p>17 Q. Well, it was more than one, because he had</p> <p>18 surgery, right?</p> <p>19 A. Right.</p> <p>20 Q. Do you think it was more than five or less than</p> <p>21 five?</p> <p>22 A. Don't know.</p> <p>23 Q. Do you know who paid for the out-of-jail</p> <p>24 appointment/medical care?</p> <p>25 A. I'm sorry? I didn't hear you.</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. Let me go back to my notes here.</p> <p>3 Have we heard all of your opinions that you're</p> <p>4 going to give in this case?</p> <p>5 A. Yes.</p> <p>6 Q. Have you ever reviewed any other cases for</p> <p>7 Mr. Cross's or Mr. Margolis's firm?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Do you know how they got ahold of your name?</p> <p>10 A. I don't recall.</p> <p>11 Q. Is your curriculum vitae up-to-date?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have an academic appointment?</p> <p>14 A. I have an unpaid academic appointment as a</p> <p>15 clinical assistant, professor of surgery for St. Louis</p> <p>16 University.</p> <p>17 Q. So what's the hierarchy of those positions? Can</p> <p>18 you run through them for me?</p> <p>19 A. I, myself, don't know the hierarchy. I've had</p> <p>20 that particular appointment since 2012-ish, and that's</p> <p>21 what they appointed me, to teach medical students, so</p> <p>22 that's all I know.</p> <p>23 Q. So what was it you were called, an assistant --</p> <p>24 A. Assistant professor of surgery is what they --</p> <p>25 Q. Assistant.</p>

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<p style="text-align: right;">Page 50</p> <p>1 For which hospital?</p> <p>2 A. St. Louis University.</p> <p>3 Q. Now, I know there's steps to go up to get to full</p> <p>4 professor, right?</p> <p>5 A. There are.</p> <p>6 Q. Is there anything above full professor that you</p> <p>7 know of at St. Louis University?</p> <p>8 A. I don't know.</p> <p>9 Q. How many steps below that are you right now?</p> <p>10 A. I'm not even on that track. I have no idea.</p> <p>11 Q. So I always thought it started out with, like,</p> <p>12 clinical assistant professor of surgery, then you moved</p> <p>13 up the ladder. You're not even -- that doesn't even</p> <p>14 apply to you?</p> <p>15 A. Correct, it doesn't apply to me.</p> <p>16 Q. Is there a hierarchy or a ladder that -- which</p> <p>17 would pertain to you?</p> <p>18 A. No.</p> <p>19 Q. So it's just clinical assistant professor of</p> <p>20 surgery, and it begins there and stops there?</p> <p>21 A. What was the last thing you said?</p> <p>22 Q. It begins there and stops there. It's not like</p> <p>23 you can move up the ladder at all?</p> <p>24 A. Right, it's an unpaid position. It's a volunteer</p> <p>25 position.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. So most of the procedures you do are colonoscopies?</p> <p>2 A. If you're going by volume as a unit, by itself,</p> <p>3 the answer would be yes.</p> <p>4 Q. Would there be another way to do it, other than</p> <p>5 by volume of the number of procedures?</p> <p>6 A. You can do it by time, Counselor.</p> <p>7 Q. Let's do it by time. What procedure do you spend</p> <p>8 the most time doing?</p> <p>9 A. Colostomies, colon surgery.</p> <p>10 Q. How many of those do you do a week on average?</p> <p>11 A. Anywhere between four and six.</p> <p>12 Q. How many colonoscopies do you do per week on</p> <p>13 average?</p> <p>14 A. Probably 10 to 15.</p> <p>15 Q. Oh, have you -- and I know there's an objection</p> <p>16 to relevance on this, but for discovery, have you ever</p> <p>17 been sued for malpractice?</p> <p>18 A. Twice.</p> <p>19 Q. In what states?</p> <p>20 A. Missouri.</p> <p>21 Q. Have you received any -- Do you have Notice of</p> <p>22 Intent in Missouri?</p> <p>23 A. I'm sorry?</p> <p>24 Q. Have you ever heard of a Notice of Intent?</p> <p>25 A. No, I don't know what that is.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. But there's not anything on your track that's</p> <p>2 above that? Like, for instance, after two years, you</p> <p>3 apply for -- I don't know -- whatever's above clinical</p> <p>4 assistant professor of surgery?</p> <p>5 A. I have no idea. I don't think so. I have no</p> <p>6 idea.</p> <p>7 Q. How long have you been on staff at St. Louis</p> <p>8 University?</p> <p>9 A. 2012.</p> <p>10 Q. Oh, sorry. You told me that. I apologize.</p> <p>11 Have you done any research for your opinions in</p> <p>12 this case?</p> <p>13 A. No.</p> <p>14 Q. You're a colorectal surgeon. Is there any</p> <p>15 sub-interest/specialty that you're more interested in?</p> <p>16 A. I am boarded in colorectal surgery.</p> <p>17 Q. I mean, is there a subset of that? Like, you're</p> <p>18 the subspecialist for oncology cases, or something like</p> <p>19 that?</p> <p>20 A. No.</p> <p>21 Q. You spend most -- do you spend most of your time</p> <p>22 doing -- what? De -- What procedure do you spend most</p> <p>23 of your time doing?</p> <p>24 A. I spend most of my time seeing patients and</p> <p>25 performing surgery, in colonoscopies.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. In Michigan, we have something called "Notice of</p> <p>2 Intent to Sue." You've never received one of those in</p> <p>3 Missouri?</p> <p>4 A. I don't think so.</p> <p>5 Q. Okay. And the two times you were sued in</p> <p>6 Missouri, they're not ongoing cases right now, are they?</p> <p>7 A. No.</p> <p>8 Q. I'm sorry, you said, no?</p> <p>9 A. No.</p> <p>10 Q. Okay. So then let me ask you. Did they go to</p> <p>11 trial at all?</p> <p>12 A. No.</p> <p>13 Q. Were -- don't tell me any number if they were</p> <p>14 settled, but were they settled?</p> <p>15 A. I think they were dropped. My name was dropped.</p> <p>16 Q. Do you know -- sometimes you can drop someone's</p> <p>17 name, but there was still a settlement. Do you know if</p> <p>18 there were settlements?</p> <p>19 A. I don't know. I have no idea.</p> <p>20 Q. Did you give depositions in those cases?</p> <p>21 A. At least one of them I did.</p> <p>22 Q. Can you just briefly tell me what the case</p> <p>23 involved?</p> <p>24 A. It involved sepsis and vertical banded</p> <p>25 gastroplasty. It happened when I was in residency.</p>



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<p style="text-align: right;">Page 54</p> <p>1 Q. You were a resident at St. Louis at the time?</p> <p>2 A. Yes.</p> <p>3 Q. How about the other one? Was it recent?</p> <p>4 A. That was -- no, that was not recent either. It</p> <p>5 was a surgeon who did two colon resections of the same</p> <p>6 patient for different pathologies. I was a covering</p> <p>7 physician.</p> <p>8 Q. Now, in those cases, you weren't the target at</p> <p>9 all of the lawsuit, either one of them, were you?</p> <p>10 A. I was named in them, so I guess I was the target.</p> <p>11 Q. Did they claim that you violated the standard of</p> <p>12 care?</p> <p>13 A. I don't recall that particular -- I don't know.</p> <p>14 Q. What are you charging for your deposition today?</p> <p>15 A. I block out four hours for all depositions. It's</p> <p>16 a \$2,000 fee.</p> <p>17 Q. And does that include your prep time?</p> <p>18 A. No.</p> <p>19 Q. How much time do you think it took to prepare for</p> <p>20 your deposition today?</p> <p>21 A. Oh, maybe four, maybe five hours.</p> <p>22 Q. And what's your hourly rate for that?</p> <p>23 A. \$500.</p> <p>24 Q. And how much time do you think you've put in this</p> <p>25 case so far?</p>	<p style="text-align: right;">Page 56</p> <p>1 average for a year is what?</p> <p>2 A. I'm probably sent maybe two cases a month to look</p> <p>3 at.</p> <p>4 Q. And how many depositions do you, typically, do a</p> <p>5 month?</p> <p>6 A. Oh, maybe -- I think, maybe one, maybe one every</p> <p>7 other month or so.</p> <p>8 Q. Have you done a trial in the last -- well,</p> <p>9 probably nobody's done a trial for a year, but before</p> <p>10 that, how many trials do you think you've appeared in,</p> <p>11 on average, a year?</p> <p>12 A. Over the last 17 years, I've probably been</p> <p>13 involved in six or seven trials maybe. That's a guess.</p> <p>14 Q. Are you listed on any expert services that you</p> <p>15 know of?</p> <p>16 A. Not to my knowledge. I don't advertise.</p> <p>17 Q. That was my next question. The number of</p> <p>18 states -- or the names of the states that you testified</p> <p>19 in -- so I'm going to guess Tennessee, Ohio and</p> <p>20 Michigan. Can you think of any others?</p> <p>21 A. I've testified in a lot of states. I've probably</p> <p>22 testified in probably close to 35 different states or</p> <p>23 so. I can't tell you every single name of them, but,</p> <p>24 yes, around 35 states or so.</p> <p>25 Q. In Michigan, you're aware that -- at least for</p>
<p style="text-align: right;">Page 55</p> <p>1 A. I don't know, but they're on the invoices, which</p> <p>2 we filed with counsel.</p> <p>3 Q. Maybe we did.</p> <p>4 MR. SCARBEE: Just for the record, Dan and</p> <p>5 Ian, I don't see anything about his payment in here, any</p> <p>6 invoices, or anything like that.</p> <p>7 MR. CROSS: On the retainer letter, there's</p> <p>8 a check and a statement about payment. There's a</p> <p>9 document that says, "Retainer Letter." It's in there.</p> <p>10 MR. SCARBEE: Okay. Thank you. Sorry about</p> <p>11 that. Go ahead.</p> <p>12 MR. CORBET: No problem.</p> <p>13 BY MR. CORBET:</p> <p>14 Q. So the case that was from Ohio, I think -- on one</p> <p>15 of the cases, they quoted you about the amount of your</p> <p>16 income that comes from the expert work that was</p> <p>17 somewhere around 25 percent. Do you remember that?</p> <p>18 A. Yep, that's accurate.</p> <p>19 Q. So I was going to say, is that still accurate</p> <p>20 today?</p> <p>21 A. Yes.</p> <p>22 Q. And the number of reviews you do annually, on</p> <p>23 average, is what?</p> <p>24 A. What was the question?</p> <p>25 Q. The number of medical case reviews that you do on</p>	<p style="text-align: right;">Page 57</p> <p>1 purposes of standard of care testimony, you have to be</p> <p>2 practicing a majority of your professional time in the</p> <p>3 specialty to which the defendant that you're testifying</p> <p>4 about is practicing. You're aware of that, right?</p> <p>5 A. I am aware of that.</p> <p>6 Q. So the majority of your professional time, I'm</p> <p>7 going to guess, is colorectal surgery?</p> <p>8 A. Yep, about 70 to 80 percent. It's a fluctuation,</p> <p>9 but 70 to 80 percent colorectal surgery, 20 to</p> <p>10 30 percent general surgery, in that range.</p> <p>11 Q. Do you know what specialty Dr. Papendick is?</p> <p>12 A. I'm assuming he's some kind of medicine doctor,</p> <p>13 maybe family medicine, or internal medicine. I don't</p> <p>14 know for sure though.</p> <p>15 Q. And how about Dr. Krause, do you know what</p> <p>16 specialty he is?</p> <p>17 A. No.</p> <p>18 Q. I should say, do you know what specialty he</p> <p>19 practices?</p> <p>20 A. Same answer.</p> <p>21 Q. Oh, you said you read the amended complaint in</p> <p>22 this case?</p> <p>23 A. Yes.</p> <p>24 Q. You read -- when did you first receive it do you</p> <p>25 think?</p>



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<p style="text-align: right;">Page 58</p> <p>1 A. I have no idea.</p> <p>2 Q. I mean, it's not been in the last couple of weeks</p> <p>3 though, has it?</p> <p>4 A. Probably not.</p> <p>5 Q. Did you have it when you wrote your report, your</p> <p>6 preliminary report in -- sorry. You don't recall?</p> <p>7 A. No.</p> <p>8 Q. You did say you saw the deposition notice for</p> <p>9 yourself?</p> <p>10 A. Yes.</p> <p>11 Q. You brought all the records -- you've supplied us</p> <p>12 with all the records you've reviewed in relation to this</p> <p>13 case?</p> <p>14 A. Yes.</p> <p>15 Q. Including notes, sticky notes, highlighted notes,</p> <p>16 dog-ear pages; is that right?</p> <p>17 A. I don't have any of those.</p> <p>18 Q. Okay. Everything you have is probably on the</p> <p>19 computer, I imagine.</p> <p>20 A. What's that?</p> <p>21 Q. Everything that you reviewed is on the computer?</p> <p>22 A. Yes.</p> <p>23 Q. Did you review any hardcopies of anything?</p> <p>24 A. No.</p> <p>25 Q. What a word when we don't review anything --</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. So, perhaps, six per month --</p> <p>2 A. Yes.</p> <p>3 Q. -- approximately?</p> <p>4 So that would be almost 70, about, per year?</p> <p>5 A. That sounds reasonable.</p> <p>6 Q. This year, has anyone who you performed a</p> <p>7 colostomy takedown on died as a result of the procedure?</p> <p>8 A. No.</p> <p>9 Q. Did anyone die last year?</p> <p>10 A. Not to my recollection. I don't think I've ever</p> <p>11 had someone die from a colostomy closure.</p> <p>12 Q. How many colostomy closures do you think you've</p> <p>13 performed over the course of your career?</p> <p>14 A. I don't know, but 17 years would be hundreds,</p> <p>15 obviously.</p> <p>16 Q. Are you aware of the risk of death associated</p> <p>17 with general anesthesia?</p> <p>18 A. Yes.</p> <p>19 Q. What is the risk of death associated with general</p> <p>20 anesthesia for an otherwise healthy middle-aged male?</p> <p>21 A. It's far less than one percent. Of course, as</p> <p>22 you alluded to, that number could rise if you have</p> <p>23 comorbidities, such as diabetes, or morbid obesity, or</p> <p>24 something like that, but an otherwise healthy male with</p> <p>25 no significant medical issues, less than one percent die</p>
<p style="text-align: right;">Page 59</p> <p>1 hardcopies. Everything's on the computer, huh?</p> <p>2 Have you written any articles on this area?</p> <p>3 A. Have I read any articles?</p> <p>4 Q. No, written any.</p> <p>5 A. No.</p> <p>6 Q. Did you write any notes in relation to this case?</p> <p>7 A. No.</p> <p>8 Q. I'm just about done.</p> <p>9 Thank you, Doctor, for your time. I appreciate</p> <p>10 it.</p> <p>11 A. No problem.</p> <p>12 MR. CROSS: All right. Did you have</p> <p>13 anything else, Devlin, or am I good to go?</p> <p>14 MR. SCARBEE: I guess, if you're going to</p> <p>15 ask questions, Ian, I'll go after you.</p> <p>16 MR. CROSS: Okay.</p> <p>17 CROSS-EXAMINATION</p> <p>18 BY MR. CROSS:</p> <p>19 Q. So, Dr. Silverman, you testified, the last time</p> <p>20 you performed a colostomy takedown was last week?</p> <p>21 A. Yes.</p> <p>22 Q. About how many colostomy takedowns do you perform</p> <p>23 in a typical month?</p> <p>24 A. Well, like I said, it's usually one or maybe two</p> <p>25 a week.</p>	<p style="text-align: right;">Page 61</p> <p>1 from anesthesia.</p> <p>2 Q. And is that -- How do you know that?</p> <p>3 A. Training and experience.</p> <p>4 Q. Is that something most physicians would know?</p> <p>5 A. Yes.</p> <p>6 MR. SCARBEE: I'm going to place an</p> <p>7 objection to foundation.</p> <p>8 MR. CORBET: Join.</p> <p>9 BY MR. CROSS:</p> <p>10 Q. So I noticed in your report, you mentioned</p> <p>11 fibrosis of the rectal stump. Can you explain what that</p> <p>12 is?</p> <p>13 MR. SCARBEE: I'm going to place an</p> <p>14 objection to relevancy. He's already testified that he</p> <p>15 didn't have it, but go ahead.</p> <p>16 MR. CORBET: Join.</p> <p>17 BY MR. CROSS:</p> <p>18 Q. Go ahead.</p> <p>19 A. Basically, when you have abdominal surgery, and</p> <p>20 you disconnect the rectum, you can have fibrosis and</p> <p>21 scarring in the abdominal cavity, as well as the pelvis</p> <p>22 and the rectum.</p> <p>23 Q. What is fibrosis?</p> <p>24 A. Basically scarring, or tissues turning into</p> <p>25 thicker -- tissues that are much more difficult to work</p>

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<p style="text-align: right;">Page 62</p> <p>1 with --</p> <p>2 Q. I'm sorry, I cut you off. What did you say?</p> <p>3 A. -- and don't function as well.</p> <p>4 Q. So does scarring, abdominal scarring, make a</p> <p>5 reversal surgery more difficult in your --</p> <p>6 A. It has the potential -- abdominal scarring has</p> <p>7 the potential for making surgery more difficult, yes.</p> <p>8 Q. What are some other factors that might make a</p> <p>9 colostomy takedown more difficult?</p> <p>10 A. Other factors would be -- for example, someone</p> <p>11 that's morbidly obese, somebody that has had multiple</p> <p>12 abdominal surgeries in the past, prior to the actual</p> <p>13 formation of the colostomy, people that are</p> <p>14 immunocompromised. I mean, I can go on and on, but all</p> <p>15 of these things can make colostomy takedown more</p> <p>16 difficult.</p> <p>17 Q. Okay. So would you agree, that the risks of a</p> <p>18 colostomy takedown vary from patient to patient?</p> <p>19 A. Of course.</p> <p>20 Q. You had an opportunity to review some of</p> <p>21 Mr. Jackson's medical records from after he was released</p> <p>22 from prison, that's correct?</p> <p>23 A. Yes.</p> <p>24 Q. Did you notice any difference in his medical</p> <p>25 condition between the time he was released and the time</p>	<p style="text-align: right;">Page 64</p> <p>1 reversal. He didn't try to get a reversal at the end of</p> <p>2 his incarceration. He only tried the first couple of</p> <p>3 months he was there. Go ahead.</p> <p>4 THE WITNESS: I saw no change in that</p> <p>5 condition.</p> <p>6 BY MR. CROSS:</p> <p>7 Q. Are you aware of any medical reason for delaying</p> <p>8 the reversal surgery by two-and-a-half years?</p> <p>9 A. No, there was absolutely no reason to delay</p> <p>10 Mr. Jackson's colostomy reversal. I would also say,</p> <p>11 that Dr. Papendick's testimony --</p> <p>12 MR. SCARBET: I'm going to place an</p> <p>13 objection, outside the scope of your question at this</p> <p>14 point. It's nonresponsive. You asked him a question.</p> <p>15 He's answered it.</p> <p>16 MR. CORBET: And this is Corbet, form,</p> <p>17 foundation. Sorry, go ahead.</p> <p>18 BY MR. CROSS:</p> <p>19 Q. What was your impression of Dr. Papendick's</p> <p>20 testimony?</p> <p>21 MR. SCARBET: I'm going to place an</p> <p>22 objection. That's outside the scope of this witness's</p> <p>23 role. He can't have an impression of a witness's</p> <p>24 testimony. It's the jury's job. And the other thing is</p> <p>25 foundation, and to form.</p>
<p style="text-align: right;">Page 63</p> <p>1 that he was in prison, that would make a colostomy</p> <p>2 reversal, say, more urgent after he was released?</p> <p>3 MR. SCARBET: Let me place an objection,</p> <p>4 Ian, because I'm going to place an objection to</p> <p>5 foundation, No. 1, because he's testified that all he</p> <p>6 saw was the operative report. I asked him about DMC</p> <p>7 records. He didn't say anything about DMC records.</p> <p>8 He's also testified that he has no evidence suggesting</p> <p>9 that Mr. Jackson's colostomy reversal was difficult or</p> <p>10 that he had any issues with it.</p> <p>11 So I'm going to place an objection to</p> <p>12 foundation, as well as relevance at this point, and</p> <p>13 mischaracterizes the witness's testimony.</p> <p>14 BY MR. CROSS:</p> <p>15 Q. You may answer.</p> <p>16 A. So I saw no difference in the medical condition.</p> <p>17 Q. Did you see any changes in his medical condition</p> <p>18 over the course of his incarceration that would make it</p> <p>19 more necessary to perform a reversal at the end of the</p> <p>20 incarceration than at the beginning?</p> <p>21 MR. SCARBET: I'm going to place another</p> <p>22 objection, to foundation and relevance.</p> <p>23 MR. CORBET: Join.</p> <p>24 MR. SCARBET: Primarily, because we're only</p> <p>25 talking about one instance where he tried to have a</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. CORBET: Join.</p> <p>2 BY MR. CROSS:</p> <p>3 Q. Doctor, do you remember being asked some</p> <p>4 questions by Mr. Scarber about your review of</p> <p>5 Dr. Papendick's testimony?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What were your impressions of</p> <p>8 Dr. Papendick's testimony?</p> <p>9 MR. SCARBET: Same objection. I asked</p> <p>10 specific questions about --</p> <p>11 MR. MARGOLIS: You've heard the objection,</p> <p>12 Devlin. You can put it on the record. You can let him</p> <p>13 answer the question.</p> <p>14 MR. SCARBET: Foundation.</p> <p>15 Listen, I've got one attorney there, Larry.</p> <p>16 I mean, I know I got Dan on my team, but still. I mean,</p> <p>17 we still represent different people.</p> <p>18 MR. CORBET: Form and foundation.</p> <p>19 Objection. This is Dan.</p> <p>20 MR. SCARBET: Thanks, Dan.</p> <p>21 BY MR. CROSS:</p> <p>22 Q. Go ahead.</p> <p>23 A. I need the question repeated.</p> <p>24 (Wherein, question is read back</p> <p>25 upon request.)</p>

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<p style="text-align: right;">Page 66</p> <p>1 MR. SCARBER: Same objection.</p> <p>2 THE WITNESS: I saw that Dr. Papendick was,</p> <p>3 basically, wrong in regards to describing the reasons</p> <p>4 for why Mr. Jackson couldn't have his colostomy</p> <p>5 reversed. I felt there was -- after reading</p> <p>6 Dr. Papendick's deposition, I saw no evidence in his</p> <p>7 deposition that he presented, that would cause him</p> <p>8 reason to not, in fact, let Mr. Jackson have his</p> <p>9 colostomy reversed, that was any different than when</p> <p>10 Mr. Jackson left jail/prison. I don't remember the</p> <p>11 difference between the two.</p> <p>12 MR. SCARBER: Foundation.</p> <p>13 BY MR. CROSS:</p> <p>14 Q. Do you remember Mr. Scarber asking you some</p> <p>15 questions about whether there is a mandate requiring</p> <p>16 colostomies to be reversed?</p> <p>17 A. Yes, I do recall that line of questioning.</p> <p>18 Q. What is your understanding of what a mandate is</p> <p>19 in the context of those questions?</p> <p>20 A. I took that to mean that there's something, in</p> <p>21 some chapter, that meant that every single colostomy</p> <p>22 must be reversed no matter what. That's how I</p> <p>23 interpreted "a mandate."</p> <p>24 Q. What do you mean by a chapter? A chapter of</p> <p>25 what?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What do you mean when you say a patient has no</p> <p>2 other complaints?</p> <p>3 MR. SCARBER: Foundation, relevance.</p> <p>4 MR. CORBET: And form.</p> <p>5 THE WITNESS: Typically, when I say, "no</p> <p>6 other complaints," me, personally, I will say -- like,</p> <p>7 for example, "no other complaints," I'm referring to,</p> <p>8 like, no chest pain, or no shortness of breath, or no</p> <p>9 leg pain, or claudication. Typically, as a surgeon, I'm</p> <p>10 writing that, "no other complaints," because I'm giving</p> <p>11 a reason why the patient could, in fact, have surgery.</p> <p>12 BY MR. CROSS:</p> <p>13 Q. I see. So "no other complaints" sort of means,</p> <p>14 no other symptoms that the patient has communicated to</p> <p>15 you?</p> <p>16 MR. SCARBER: Foundation.</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. SCARBER: Relevance. His personal</p> <p>19 practice is --</p> <p>20 THE REPORTER: I'm sorry?</p> <p>21 MR. SCARBER: I said, his answer's outside</p> <p>22 the scope of the question, but go ahead.</p> <p>23 BY MR. CROSS:</p> <p>24 Q. If you had a stoma, would you seek a reversal</p> <p>25 surgery?</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Like in some medical textbook, or some resource</p> <p>2 like that.</p> <p>3 Q. If a patient doesn't want to undergo a surgical</p> <p>4 procedure, regardless of what that surgical procedure</p> <p>5 is, is there ever a time when they have to undergo the</p> <p>6 surgical procedure?</p> <p>7 A. If they're of sound mind, and can make their own</p> <p>8 decisions, there's never a time where they have to do</p> <p>9 that.</p> <p>10 Q. Do you write -- you were asked about some notes</p> <p>11 that Dr. Kansakar or Dr. Weber made following their</p> <p>12 visits with the plaintiff in this case. Do you remember</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you typically write notes when you see a</p> <p>16 patient in their medical chart?</p> <p>17 A. Yes.</p> <p>18 Q. And when you write, "No other complaints," what</p> <p>19 does that mean exactly?</p> <p>20 MR. SCARBER: I'm just going to place an</p> <p>21 objection to foundation.</p> <p>22 BY MR. CROSS:</p> <p>23 Q. I'm sorry, do you ever write, "No other</p> <p>24 complaints," in your notes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. SCARBER: I'm just going to place an</p> <p>2 objection.</p> <p>3 THE WITNESS: Are you talking about</p> <p>4 personally?</p> <p>5 BY MR. CROSS:</p> <p>6 Q. Yes.</p> <p>7 MR. SCARBER: Let me make my objection.</p> <p>8 Object to foundation and relevance. Go ahead.</p> <p>9 MR. CORBET: And form.</p> <p>10 THE WITNESS: I, personally, would like my</p> <p>11 stoma reversed. In my experience, I will tell you that,</p> <p>12 the overwhelming majority, I'd venture to say,</p> <p>13 99 percent of people who have had stomas would like them</p> <p>14 reversed.</p> <p>15 BY MR. CROSS:</p> <p>16 Q. Why would -- or let me ask it this way. Why do</p> <p>17 the overwhelming majority of your patients want to have</p> <p>18 their stoma reversed?</p> <p>19 MR. SCARBER: Foundation. Go ahead.</p> <p>20 MR. CORBET: Form and foundation, and</p> <p>21 relevance.</p> <p>22 THE WITNESS: Because people want their</p> <p>23 stomas reversed because they can be difficult to manage,</p> <p>24 they require a lot of upkeep, they require having a</p> <p>25 constant supply of -- supplies to change the stoma.</p>

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<p style="text-align: right;">Page 70</p> <p>1 They can leak, they can be embarrassing, they can smell,  2 and cause social anxiety and psychological issues; and  3 we have teams of people, clinics that we send patients,  4 just for these particular issues.  5 BY MR. CROSS:  6 Q. So would you agree that having a colostomy  7 involves suffering?  8 MR. SCARBET: I'm just going to place an  9 objection to form and foundation.  10 MR. CORBET: Join.  11 THE WITNESS: That question is based on my  12 experience over the last 17 years, dealing with patients  13 with colostomies; that, in fact, there is a significant  14 amount of suffering that goes with them, and social  15 disability.  16 BY MR. CROSS:  17 Q. And you testified that you refer patients with  18 colostomies to special treatment providers to deal  19 specifically with those social and personal issues  20 associated with having a bag?  21 A. Yes. So people we send them to not only help  22 them with the appliances, and what is the most secure  23 appliance, and things that they can live with, and they  24 also help them socially, and what things you can and  25 can't do, and things like that.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Because if you're having some kind of emotional  2 problem, or psychological problem, or a problem coping;  3 if you're really having an issue, you want to get help  4 with that, as a patient?  5 A. Some people want to, some people don't. I send  6 -- patients a lot of times will want to go to these  7 places initially for help with the actual pouch, we call  8 pouching, but then they provide another service on top  9 of that. Whenever we have a colostomy --  10 Q. Doctor, my question is very simple.  11 A. I find that rude that you would cut off my  12 answer.  13 Q. Well, welcome to --  14 A. I'm just trying to elaborate --  15 Q. I didn't ask you to elaborate. I asked you a  16 question; and when I ask questions, I try to get an  17 answer to the question. I don't want to be rude, but  18 you started going off on something else that I didn't  19 ask you.  20 My question is -- you may have answered it.  21 That's why I stopped you, because --  22 A. Go ahead.  23 Q. -- I lose your answer when you keep going on and  24 on.  25 My question is, people that you typically refer</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Okay.  2 MR. CORBET: Form and foundation by the way,  3 sorry.  4 MR. CROSS: I don't think I have any further  5 questions. I may have some follow-up if there is  6 recross.  7 REDIRECT-EXAMINATION  8 BY MR. SCARBET:  9 Q. Doctor, are you aware that Mr. Jackson was  10 actually offered some kind of social counseling, and  11 counseling to help him cope with having the colostomy,  12 and he did not want it when he was in the Michigan  13 Department of Corrections?  14 A. I do recall reading something along those lines.  15 Q. And the patients that you refer to these  16 psychological programs or coping programs, these people  17 that you are referring, these are people that want to  18 get the help, so that they can learn how to cope with  19 this stuff, right, with having this colostomy?  20 A. You mischaracterized when I said, "these people."  21 There are stoma clinics. They help them with the stomas  22 and the pouches and the supplies, but they also help  23 them psychologically and socially with the stomas; and  24 the answer is, yes, the overwhelming majority would want  25 to go to those particular programs.</p>	<p style="text-align: right;">Page 73</p> <p>1 to these particular coping programs, who help them with  2 the stoma, who --  3 A. You're mischaracterizing it again. So I will  4 answer this question when you characterize it the right  5 way.  6 Q. The people that you refer out to get assistance  7 with their stoma, and who, on top of that service, also  8 help them with dealing with the stoma, the patients you  9 send to these places, these are patients that want to  10 get that kind of assistance, correct?  11 A. I was trying to answer that question.  12 Q. Yes or no?  13 A. No.  14 Q. They don't want that assistance?  15 A. I will elaborate if you want me to.  16 Q. Yes or no, do the people you send these people --  17 you send your patients to, who provide this --  18 A. I send all of my colostomy patients, ileostomy  19 patients to these people for helping with the pouching  20 system. All of them go. On top of that, they will  21 offer some psychosocial things on top of that. Most of  22 the people, overwhelming majority of the people, want to  23 go when I offer that assistance.  24 Q. Thank you.  25 Another question --</p>

Ralph Silverman, M.D.

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<p style="text-align: right;">Page 74</p> <p>1 A. That's the elaboration that you wouldn't let me</p> <p>2 do.</p> <p>3 Q. Another question for you. In the Gysegem</p> <p>4 opinion, the court also indicated --</p> <p>5 MR. CROSS: Objection. This is outside of</p> <p>6 cross.</p> <p>7 BY MR. SCARBER:</p> <p>8 Q. -- quote, "Dr. Silverman lacks the credentials of</p> <p>9 opposing experts. Dr. Silverman does not currently</p> <p>10 teach any surgery or any general surgery residents, and</p> <p>11 Dr. Silverman has never taught fellows in any</p> <p>12 specialty." This is actually in response to</p> <p>13 Mr. Corbet's question.</p> <p>14 Is that true, Doctor, that you have never -- you</p> <p>15 don't currently teach any general surgery residents, and</p> <p>16 have never taught any fellows?</p> <p>17 A. That's absolutely true. The only people I've</p> <p>18 taught, which I've testified truthfully to, is medical</p> <p>19 students. Absolutely true.</p> <p>20 Q. Do you treat any individuals in the Department of</p> <p>21 Corrections?</p> <p>22 A. No.</p> <p>23 Q. No? I didn't hear you, I'm sorry.</p> <p>24 A. Oh, I said no, and I'm thinking about it, but</p> <p>25 I've never had a prisoner -- I may have had one or two</p>	<p style="text-align: right;">Page 76</p> <p>1 a patient who has a surgery, gets to go home for three</p> <p>2 weeks and recover, and go on with his life, right?</p> <p>3 Correct?</p> <p>4 A. I don't know. I have no idea.</p> <p>5 Q. Someone who you perform a surgery on is going to</p> <p>6 get to go home, be taken care of by their family maybe,</p> <p>7 and --</p> <p>8 A. So the perception I have would be maybe that --</p> <p>9 and, again, I don't know. Maybe you have surgery, and</p> <p>10 you recover for a few days in the hospital, maybe go --</p> <p>11 I don't know where you go after that.</p> <p>12 Q. Okay. But you would agree that their perception</p> <p>13 would be that it's going to be a little bit different</p> <p>14 for a prisoner who undergoes a surgery and has to return</p> <p>15 to prison versus the average patient you would have, or</p> <p>16 a routine patient that you would have, that you would</p> <p>17 perform the surgery and they would just go home?</p> <p>18 A. I would not expect a prisoner to go home after</p> <p>19 surgery, that is correct.</p> <p>20 Q. You would expect that prisoner to go back to --</p> <p>21 probably what would be a more populated area, and a more</p> <p>22 dangerous area, right, after having a surgery?</p> <p>23 A. I have no idea where they go. I don't know if</p> <p>24 they go to a step-down, they go to a hospital infirm. I</p> <p>25 don't know. I have no idea.</p>
<p style="text-align: right;">Page 75</p> <p>1 consults in the hospital over the last 17 years of a</p> <p>2 prisoner, but I have no independent recollection of it.</p> <p>3 Q. In any event then, Doctor, it's not something</p> <p>4 that -- that's not a particular practice that you have a</p> <p>5 whole lot of experience, or maybe any experience doing,</p> <p>6 correct?</p> <p>7 A. Right.</p> <p>8 Q. Are you aware of the circumstances that prisoners</p> <p>9 have to undergo when they're in the prison system, in</p> <p>10 terms of being exposed to a greater degree of infection,</p> <p>11 being exposed to a greater degree of injury, things like</p> <p>12 that?</p> <p>13 A. If the question is, Do I have objective knowledge</p> <p>14 of that, I don't. I have perceptions, but not objective</p> <p>15 knowledge.</p> <p>16 Q. What is your perception of that? Do you perceive</p> <p>17 or --</p> <p>18 A. I perceive that prisons can be potentially</p> <p>19 dangerous places. That's all --</p> <p>20 Q. So my question --</p> <p>21 A. But it's a perception. It's not based in</p> <p>22 reality. I've never been in prison. I don't have an</p> <p>23 inner understanding of prisons and jails, and things</p> <p>24 like that.</p> <p>25 Q. And prisons can be more dangerous places than for</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. So you really -- I guess what you're</p> <p>2 saying, you really have no idea --</p> <p>3 A. I think I've answered that pretty clearly. I</p> <p>4 have no idea.</p> <p>5 Q. You have no idea what's happening in these</p> <p>6 prisons, correct?</p> <p>7 A. I have never been there. I don't know what's</p> <p>8 happening in prisons.</p> <p>9 Q. Okay. You indicated something about, if</p> <p>10 Dr. Papendick determined -- and you might have</p> <p>11 indirectly said this, but I just want to be clear. I</p> <p>12 think you indicated that, if Dr. Papendick had made some</p> <p>13 kind of different decision, that the patient would have</p> <p>14 gotten a reversal surgery. Did you suggest that, or did</p> <p>15 I hear that wrong?</p> <p>16 A. I don't recall. I don't recall that line of</p> <p>17 questioning.</p> <p>18 Q. Are you aware, Dr. Silverman, that the MDOC</p> <p>19 itself, the Illinois Department of Corrections, has</p> <p>20 their own policies about which particular types of</p> <p>21 procedures they will approve, and the procedures for how</p> <p>22 those particular surgeries get approved, and they go</p> <p>23 beyond Dr. Papendick?</p> <p>24 A. I am not holding myself out to understand the</p> <p>25 inner workings of the Department of Corrections, and</p>

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<p style="text-align: right;">Page 78</p> <p>1 their policies, and the things you just mentioned.</p> <p>2 Q. So nothing you were testifying to was implying</p> <p>3 something about there being some type of policies on</p> <p>4 behalf of the healthcare company that has to work within</p> <p>5 the prison, or the Michigan Department of Corrections'</p> <p>6 policies themselves, correct?</p> <p>7 A. I have not given any opinions on the Michigan</p> <p>8 Department of Correction policies.</p> <p>9 Q. Okay. And no written policies, or anything like</p> <p>10 that on behalf of the healthcare providers who provide</p> <p>11 any kind of care within the prison, correct?</p> <p>12 A. I have not opined on any policies.</p> <p>13 Q. Thank you.</p> <p>14 I just want to -- you're not aware of Mr. Jackson</p> <p>15 having any issues with constipation, polyps, bleeding,</p> <p>16 open sores, bloody sores, stoma issues, while he was in</p> <p>17 the Michigan Department of Corrections or the jail, are</p> <p>18 you?</p> <p>19 A. No, just the bleeding from the assault, nothing</p> <p>20 else on that list.</p> <p>21 Q. And this bleeding that we're talking about from</p> <p>22 the assault, you're aware that he was sent to the</p> <p>23 emergency room by the healthcare providers in the prison</p> <p>24 the same day, and he had no issues following that with</p> <p>25 respect to any injuries or damages to his colostomy</p>	<p style="text-align: right;">Page 80</p> <p>1 hours.</p> <p>2 Q. And that's what you think your rate is going to</p> <p>3 end up being?</p> <p>4 A. Yes.</p> <p>5 Q. Nothing further. Thank you, Doctor.</p> <p>6 MR. CORBET: Can you hear me, Doctor? I</p> <p>7 have some follow-up. This is Dan Corbet.</p> <p>8 THE WITNESS: Yes, Dan.</p> <p>9 RECROSS-EXAMINATION</p> <p>10 BY MR. CORBET:</p> <p>11 Q. Would you agree that there is no consensus</p> <p>12 regarding the timing of reversal of Hartmann's</p> <p>13 procedure, as of 2015 anyways?</p> <p>14 A. I would think that the consensus, if there's no</p> <p>15 contraindications, depending on the disease process,</p> <p>16 would be to reverse in around two months.</p> <p>17 Q. You would agree -- so you disagree with that</p> <p>18 statement that I just made, correct?</p> <p>19 A. Correct. And I would also elaborate to say, that</p> <p>20 it's safest to wait at least two months to reverse them.</p> <p>21 Q. Okay. Many studies reported a median time to the</p> <p>22 reversal procedure of nine months; is that right?</p> <p>23 A. Are you talking about averages, or are you</p> <p>24 talking about when it's safest to?</p> <p>25 Q. A median time. So it's neither. It's median.</p>
<p style="text-align: right;">Page 79</p> <p>1 area?</p> <p>2 A. I'm aware of that.</p> <p>3 Q. You would also agree with me that he had no</p> <p>4 profuse bleeding from his stoma?</p> <p>5 A. Right.</p> <p>6 Q. You would agree with me that he had nothing</p> <p>7 saying that his colostomy bag was always, or was ever</p> <p>8 full of any blood that you saw from a medical record,</p> <p>9 right?</p> <p>10 A. I don't recall.</p> <p>11 Q. You would agree that he didn't develop any</p> <p>12 complications at his stoma site, right?</p> <p>13 A. Yes.</p> <p>14 Q. I looked through the document that Mr. Cross</p> <p>15 referenced, called the "Retainer Letter," and I did not</p> <p>16 see anything in this letter, other than a letter dated</p> <p>17 November 20th, 2020, when you were originally sent the</p> <p>18 case, it sounds like, and a check for \$2,500.</p> <p>19 Do you have any subsequent billing in this case,</p> <p>20 or invoices in this case with respect to your review or</p> <p>21 anything like that? I know we paid you to be here.</p> <p>22 A. I don't think so.</p> <p>23 Q. Okay. You haven't -- How much are you charging</p> <p>24 for the preparation time that you have put in thus far?</p> <p>25 A. We talked about that. It was about five or six</p>	<p style="text-align: right;">Page 81</p> <p>1 Median means halfway point, right?</p> <p>2 A. Yeah. So if you're asking, When does the average</p> <p>3 stoma get -- a median stoma -- I guess that's what</p> <p>4 you're quoting there. I don't know that.</p> <p>5 Q. This patient --</p> <p>6 A. I would also go on to say, Counselor, that all of</p> <p>7 the different reasons for why colostomies may be formed</p> <p>8 are inside of that data, not just one particular disease</p> <p>9 process.</p> <p>10 Q. I'm sorry, did I ask you that question? Can you</p> <p>11 hear me, Doctor?</p> <p>12 A. Yes.</p> <p>13 Q. Did I ask you that question?</p> <p>14 A. You're asking me about data, so I have to be able</p> <p>15 to interpret the data that you're quoting from. So I</p> <p>16 have to make sense of the data that I have not had a</p> <p>17 chance to read, that you get to read off of that.</p> <p>18 Q. So my question was, do you agree with that</p> <p>19 statement, and then you elaborated on something that I</p> <p>20 didn't ask, and now I understand Mr. Scarber's</p> <p>21 objections to you --</p> <p>22 A. Counselor --</p> <p>23 Q. -- elaborate.</p> <p>24 A. Because I haven't seen the document.</p> <p>25 Q. Okay. So that's why I'm not asking you about a</p>

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<p style="text-align: right;">Page 82</p> <p>1 particular document. I'm just asking you if you agree</p> <p>2 that many studies -- First of all, this patient had a</p> <p>3 Hartmann procedure, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And so, as a result of the Hartmann procedure,</p> <p>6 part of that is, a colostomy was formed, correct?</p> <p>7 A. That's the definition of a Hartmann.</p> <p>8 Q. Okay. Thank you.</p> <p>9 So you disagree with the statement that there is</p> <p>10 no consensus regarding the timing or reversal of</p> <p>11 Hartmann's procedure, correct? You disagree that?</p> <p>12 A. Yes.</p> <p>13 Q. And you didn't come here today with any</p> <p>14 literature to support your opinion, did you?</p> <p>15 A. No.</p> <p>16 Q. Even though I think the deposition notice asked</p> <p>17 you to bring whatever documents you have. You know</p> <p>18 what, I don't want to -- let me see what it actually</p> <p>19 says for sure.</p> <p>20 I'll leave that one alone. I'm reading the dep</p> <p>21 notice right now. I'm not sure it's that specific, so</p> <p>22 let me go back to my question; and my question is, you</p> <p>23 would disagree that many studies reported a median time</p> <p>24 to the reversal procedure of nine months. Do you agree</p> <p>25 with that or you don't agree with that?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. That is correct. I cannot say that.</p> <p>2 Q. But you can't say you haven't seen studies like</p> <p>3 that?</p> <p>4 A. I'm not seeing the studies that you're</p> <p>5 particularly talking about, nor the disease processes</p> <p>6 for why the Hartmann's procedures were performed in the</p> <p>7 first place; and by the way, the variables that you're</p> <p>8 talking about, that you're asking me to opine about; for</p> <p>9 example, nutritional status, intraabdominal scarring,</p> <p>10 has nothing to do with the case that we're talking</p> <p>11 about.</p> <p>12 Q. And it says, "In our patients, time until</p> <p>13 reversal was shorter for diverticulitis compared with</p> <p>14 cancer, 6 months versus 12 months."</p> <p>15 You can't agree with that, can you?</p> <p>16 A. I can agree with that, because you've given me</p> <p>17 context as what the disease process [sic]. Surely</p> <p>18 reversals for Hartmann's, secondary to diverticulitis,</p> <p>19 is far less than those that have rectal or colon cancer,</p> <p>20 who, more likely than not, are receiving chemotherapy or</p> <p>21 radiation because they had a Hartmann's in the first</p> <p>22 place, which meant it was either obstructing, or</p> <p>23 something along those lines, which is advanced cancer.</p> <p>24 Q. Okay. But this says 6 months versus 12 months.</p> <p>25 You disagree with that, correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 A. I can't comment on that without reading what</p> <p>2 you're reading.</p> <p>3 Q. Do you agree that delayed reversal has been</p> <p>4 advocated in several studies?</p> <p>5 A. No context. I can't comment on that.</p> <p>6 Q. So I'm talking about the reversal -- it's talking</p> <p>7 about reversal of a colostomy in somebody who's had a</p> <p>8 Hartmann procedure. You can't comment on whether or not</p> <p>9 there is some -- several studies have advocated delayed</p> <p>10 reversal. You don't know that one way or another,</p> <p>11 correct?</p> <p>12 A. I would need context; and, specifically, what are</p> <p>13 the reasons the colostomy was made, and what</p> <p>14 comorbidities we're looking at. There's a lot of</p> <p>15 context that you're not giving me.</p> <p>16 Q. How about if I added, the reasons included less</p> <p>17 dense adhesions, and more time to optimize the clinical</p> <p>18 and nutritional status of the patient? Does that give</p> <p>19 you enough context to answer, that delayed reversal has</p> <p>20 been advocated in several studies?</p> <p>21 A. There's no context in there at all, actually,</p> <p>22 Counselor.</p> <p>23 Q. Okay. So you can't say you are aware or you're</p> <p>24 not aware that delayed reversal has been advocated in</p> <p>25 several studies regarding the Hartmann procedure?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Six months for diverticulitis?</p> <p>2 Q. And 12 months for cancer.</p> <p>3 A. All I'm going to agree to is that, you would wait</p> <p>4 longer for colon cancer or rectal cancer, then you would</p> <p>5 have to individualize the patient for each of those</p> <p>6 disease processes. Again, the overwhelming majority of</p> <p>7 colostomies are reversed within two or three months of</p> <p>8 formation for diverticulitis.</p> <p>9 Q. So if it's a patient who's got diverticulitis,</p> <p>10 the reason advocated in several studies for waiting</p> <p>11 longer -- I guess it doesn't say what delayed reversal</p> <p>12 is, but delayed reversal in diverticulitis patients has</p> <p>13 been advocated in several studies. One of the reasons</p> <p>14 is less dense adhesions. Do you understand that</p> <p>15 context?</p> <p>16 A. Yes.</p> <p>17 Q. So if there is an article out there that says</p> <p>18 that, you would disagree with it, correct?</p> <p>19 A. I don't understand what exactly you're reading,</p> <p>20 Counselor. I will tell you that the overwhelming</p> <p>21 majority of patients with Hartmann procedures from</p> <p>22 diverticulitis can be safely reversed around eight</p> <p>23 weeks.</p> <p>24 Q. Why would somebody write that it would be -- a</p> <p>25 median time to the reversal procedure would be nine</p>



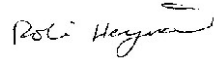
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<p style="text-align: right;">Page 86</p> <p>1 months?</p> <p>2 MR. CROSS: Objection, calls for</p> <p>3 speculation.</p> <p>4 MR. CORBET: I heard a lot of speculative</p> <p>5 answers today.</p> <p>6 THE WITNESS: And I would need to look at</p> <p>7 the studies that you're referring to; and it looks like</p> <p>8 what you are citing is a meta-analysis, which means it's</p> <p>9 a paper that's looking at multiple studies. In order to</p> <p>10 answer the question appropriately, you would want to see</p> <p>11 what each study is actually saying.</p> <p>12 BY MR. CORBET:</p> <p>13 Q. Did you bring any studies with you today?</p> <p>14 A. No, and you're not supplying me with any either,</p> <p>15 just asking me to comment on them without looking at</p> <p>16 them.</p> <p>17 Q. And you are retained by the plaintiff to be an</p> <p>18 expert in this case, correct?</p> <p>19 A. Yeah, we've already covered that, Counselor.</p> <p>20 Q. I'm just putting it in context at this point in</p> <p>21 time.</p> <p>22 So you would want to do the reversal, if you're</p> <p>23 going to do it, if there were less dense adhesions,</p> <p>24 correct?</p> <p>25 A. You would want -- based on the patient, you want</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I usually do one or two maybe a month. It hasn't</p> <p>2 changed in the last three years.</p> <p>3 Q. So you're not aware of any -- you're not aware of</p> <p>4 any studies out there that would suggest it would be</p> <p>5 better to wait more than three months to reverse a</p> <p>6 Hartmann's procedure in a patient who had</p> <p>7 diverticulitis?</p> <p>8 A. Correct.</p> <p>9 Q. Would that be a breach to the standard of care if</p> <p>10 a surgeon was to wait more than three months to reverse</p> <p>11 a Hartmann's procedure in a patient who had</p> <p>12 diverticulitis?</p> <p>13 A. It depends on the patient's individual factors</p> <p>14 and whatnot. I can't answer that. Lots of -- I can</p> <p>15 tell you that lots of patients with diverticulitis, who</p> <p>16 have had Hartmann's procedures for one reason or</p> <p>17 another, do not need to wait longer than three months.</p> <p>18 Q. Why is that?</p> <p>19 A. Maybe it's individual factors, maybe they're</p> <p>20 immunocompromised, maybe they're morbidly obese and</p> <p>21 asked to lose weight, maybe they have uncontrolled</p> <p>22 diabetes, and diabetes should be better controlled</p> <p>23 before they actually undergo the colostomy reversal.</p> <p>24 There's a host of reasons why you could wait.</p> <p>25 Q. Thank you. I'm done. I appreciate your time,</p>
<p style="text-align: right;">Page 87</p> <p>1 to wait until they're recovered from their colostomy</p> <p>2 procedure, and you want to wait until the intraabdominal</p> <p>3 inflammation, which is probably the adhesion, is at its</p> <p>4 lowest, and that's usually at least around eight weeks</p> <p>5 or so, which is when Dr. Kansakar was going to reverse</p> <p>6 Mr. Jackson in the first place, at least temporarily.</p> <p>7 Tentatively scheduled I should say.</p> <p>8 Q. Did I ask that question?</p> <p>9 A. That's part of my answer.</p> <p>10 Q. Move to strike, beyond the scope of the question.</p> <p>11 Did I hear that one of the courts found that you</p> <p>12 were biased and not credible? Do you remember that</p> <p>13 part of your deposition, Doctor?</p> <p>14 A. Yep.</p> <p>15 Q. Did you ever hear that from the attorney that</p> <p>16 retained you in the case?</p> <p>17 A. No.</p> <p>18 Q. Today is the first day that you've ever heard</p> <p>19 anybody ask you about that decision?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know when you testified in that case, how</p> <p>22 many years ago it was?</p> <p>23 A. I believe counselor mentioned around 2018.</p> <p>24 Q. How many depositions have you done in the last</p> <p>25 three years do you think?</p>	<p style="text-align: right;">Page 89</p> <p>1 Doctor.</p> <p>2 MR. CROSS: I just have some brief cross.</p> <p>3 RECROSS-EXAMINATION</p> <p>4 BY MR. CROSS:</p> <p>5 Q. You testified that, by the time -- the</p> <p>6 appropriate amount of time to wait before reversing a</p> <p>7 stoma is dependent on the reasons that the stoma was</p> <p>8 placed, correct?</p> <p>9 A. Yes, that is one of many reasons, one of many</p> <p>10 things you would look at.</p> <p>11 Q. What other things would you look at?</p> <p>12 A. I don't understand the question.</p> <p>13 Q. Okay. You said that the reason that you placed</p> <p>14 the stoma is one thing that you would look at in</p> <p>15 determining the appropriate amount of time to wait</p> <p>16 before performing a reversal surgery?</p> <p>17 A. Correct.</p> <p>18 Q. What are some other factors that you would look</p> <p>19 at besides that one?</p> <p>20 A. You would look at their overall health, their</p> <p>21 comorbidities; for example, diabetes, hypertension,</p> <p>22 asthma, emphysema, COPD, those kinds of things. You</p> <p>23 would want to make sure their medical issues were</p> <p>24 well-managed and controlled. You would want to make</p> <p>25 sure that they are of appropriate weight so you can</p>



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<p style="text-align: right;">Page 90</p> <p>1 decrease your incidence of wound infections and hernias.</p> <p>2 You would want to make sure that they have had proper</p> <p>3 nutritional support, if, in fact, they require that at</p> <p>4 all. Usually, that's for our very sick patients at the</p> <p>5 extremes of age. So those are some of the things that</p> <p>6 you would look at before making a decision to reverse a</p> <p>7 colostomy, or ileostomy, or a stoma, if you will.</p> <p>8 Q. And in looking at Mr. Jackson's records that you</p> <p>9 reviewed in this case, did you see any medical reason to</p> <p>10 delay the reversal?</p> <p>11 MR. SCARBER: I just want to place an</p> <p>12 objection, asked and answered, but go ahead, Doctor.</p> <p>13 MR. CORBET: And form and foundation.</p> <p>14 THE WITNESS: I see no evidence in the chart</p> <p>15 why there was a contraindication for reversing</p> <p>16 Mr. Jackson's colostomy.</p> <p>17 MR. CROSS: Okay. I don't have any further</p> <p>18 questions. Thank you.</p> <p>19 MR. SCARBER: Nothing from me. Thanks a</p> <p>20 lot, Doctor.</p> <p>21 MR. CORBET: Just a little bit of follow-up</p> <p>22 on that.</p> <p>23 RE-CROSS-EXAMINATION</p> <p>24 BY MR. CORBET:</p> <p>25 Q. I see that we were sent some of the DMC records.</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. For you to have written the report, assuming that</p> <p>2 you wrote the report, right, that means that you would</p> <p>3 have had to have the records in front of you, that you</p> <p>4 would have needed in order to be able to say the things</p> <p>5 you said in this report?</p> <p>6 A. I'm assuming so.</p> <p>7 Q. I got nothing further.</p> <p>8 MR. SCARBER: E-tran.</p> <p>9 THE REPORTER: Copies?</p> <p>10 MR. CROSS: Yes.</p> <p>11 MR. CORBET: I would like a copy, please</p> <p>12 e-tran, four per page.</p> <p>13 (FURTHER DEPONENT SAITH NOT.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p>1 Were you sent those DMC records too?</p> <p>2 A. I don't recall.</p> <p>3 Q. The only thing I think you said you saw from the</p> <p>4 DMC records was the operative report; is that true?</p> <p>5 A. I did say that.</p> <p>6 Q. Did you see that today for the first time, or</p> <p>7 have you seen that in the past?</p> <p>8 A. I think I've seen it in the past.</p> <p>9 Q. And what set of records? Because we're looking</p> <p>10 at your records that were emailed to us.</p> <p>11 A. I don't recall.</p> <p>12 Q. Is it possible, you saw it today for the first</p> <p>13 time when Mr. Scarber showed it to you?</p> <p>14 A. I think it's possible, but I think I saw it</p> <p>15 before. I answered truthfully.</p> <p>16 Q. What set of records do you think you saw it in?</p> <p>17 A. Asked and answered. I don't recall.</p> <p>18 Q. Okay. I'm sorry, Doctor. Thank you very much</p> <p>19 for your time.</p> <p>20 REDIRECT-EXAMINATION</p> <p>21 BY MR. SCARBER:</p> <p>22 Q. Let me ask you a question, Doctor. Did you write</p> <p>23 the report, or did Mr. Cross, or someone in plaintiff's</p> <p>24 office write it for you?</p> <p>25 A. I wrote the entire report and signed it.</p>	<p style="text-align: right;">Page 93</p> <p>1 STATE OF ILLINOIS )</p> <p>2 ) SS:</p> <p>3 COUNTY OF DUPAGE )</p> <p>4</p> <p>5 I, ROBIN HEJNAR, a Certified Shorthand Reporter</p> <p>6 and Registered Professional Reporter do hereby certify:</p> <p>7 That prior to being examined, the witness in</p> <p>8 the foregoing proceeding was by me duly sworn to testify</p> <p>9 to the truth, the whole truth, and nothing but the</p> <p>10 truth;</p> <p>11 That said proceedings were taken remotely</p> <p>12 before me at the time and places therein set forth and</p> <p>13 were taken down by me in shorthand and thereafter</p> <p>14 transcribed into typewriting under my direction and</p> <p>15 supervision;</p> <p>16 I further certify that I am neither counsel</p> <p>17 for, nor related to, any party to said proceedings, not</p> <p>18 in anywise interested in the outcome thereof.</p> <p>19 In witness whereof, I have hereunto subscribed</p> <p>20 my name.</p> <p>21 Dated: August 6, 2021</p> <p>22 </p> <p>23 _____</p> <p>24 ROBIN HEJNAR, RPR</p> <p>25 CSR No. 084-004689</p>

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